

***United States Court of Appeals
for the Second Circuit***



APPENDIX

NO. 75-4215

United States Court of Appeals FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

A. LASAPONARA & SONS, INC.,
A WHOLLY OWNED SUBSIDIARY OF ERE INDUSTRIES, ETC.,

Respondent.

On Application for Enforcement of an Order of
The National Labor Relations Board

APPENDIX

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570.

FEB 24 1978

DANIEL R. MOORE, CLERK

SECOND CIRCUIT

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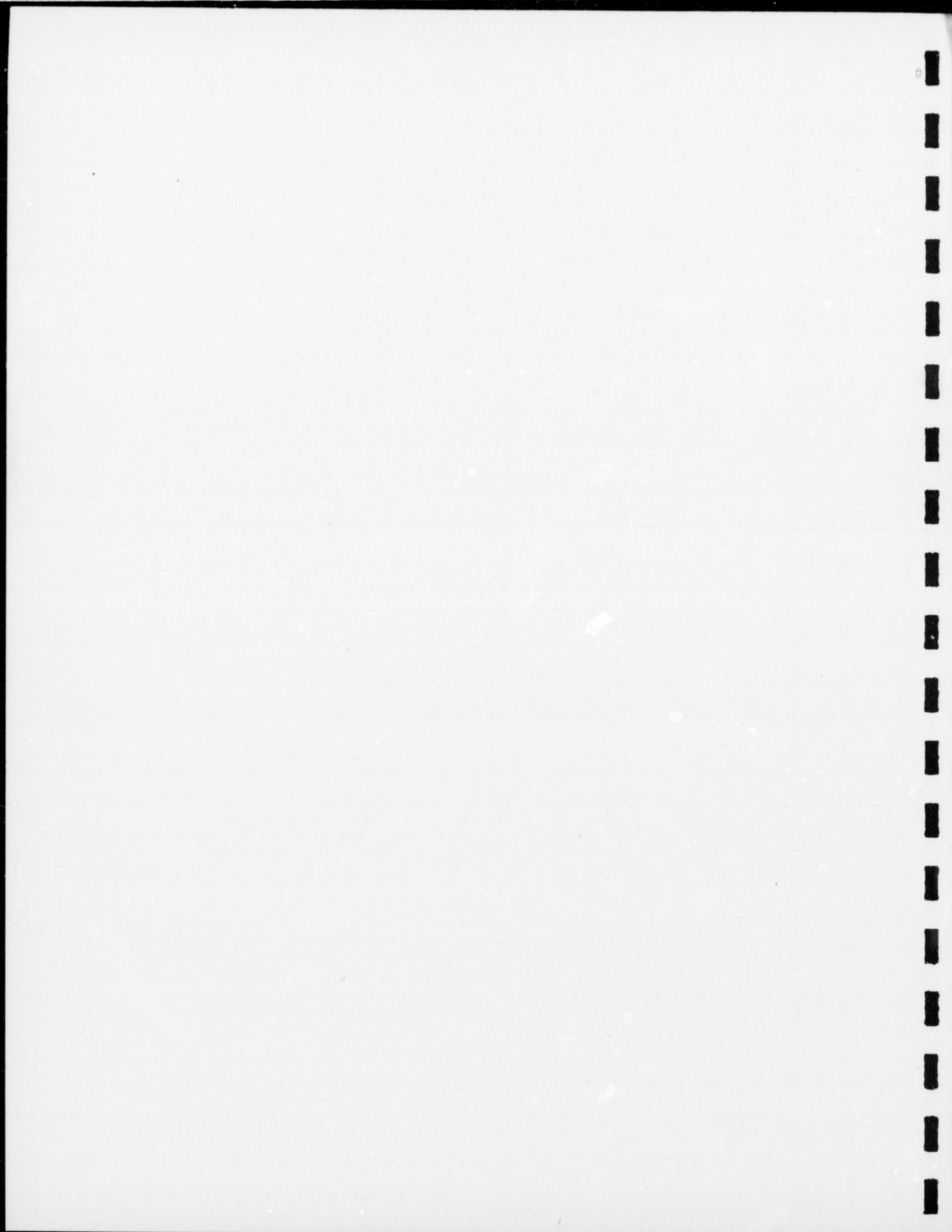
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APPENDIX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

A. LASAPONARA & SONS, INC.,
A WHOLLY OWNED SUBSIDIARY OF
ERE INDUSTRIES, INC.

and

Case No. 3-CA-5634

MECHANICS EDUCATIONAL SOCIETY
OF AMERICA, AFL-CIO

A. LASAPONARA & SONS, INC.,
A WHOLLY OWNED SUBSIDIARY OF
ERE INDUSTRIES, INC. AND ERE
INDUSTRIES, INC.

and

Case No. 3-CA-5708

MECHANICS EDUCATIONAL SOCIETY
OF AMERICA, AFL-CIO

Francis J. Novak, Jr., Esq.,

for the General Counsel.

Mr. James Kozma and

Mr. James DeBella, Rome, N.Y.,

for the Union (Charging Party).

Rolland R. Benzow, (Benzow,

Finck, Handel, Barrett & Owens),

Buffalo, N.Y., for the

Respondent Employer.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: A. Lasaponara & Sons, Inc.,
 a wholly owned subsidiary of
 ERE Industries, Inc., and/or
 ERE Industries, Inc.

Case Nos.: 3-CA-5634 & 3-CA-5708

- 4.10.74 Charge filed in 3-CA-5634
- 5.31.74 Amended Charge filed
- 6.12.74 Charge filed in 3-CA-5708
- 6.14.74 Complaint and Notice of Hearing in 3-CA-5634, dated
- 7.9.74 Respondent's Answer in 3-CA-5634, received
- 7.15.74 Respondent's Demand for Bill of Particulars, dated
- 7.19.74 General Counsel's Bill of Particulars, dated
- 7.19.74 Regional Director's Order Referring Respondent's Demand for
 Bill of Particulars to the Administrative Law Judge, dated
- 7.19.74 General Counsel's Answer in Opposition to Part of Respondent's
 Demand for Bill of Particulars, dated
- 7.23.74 Amended Charge filed in 3-CA-5708
- 7.24.74 Order Postponing Hearing Indefinitely, dated
- 7.25.74 Second Amended Charge in 3-CA-5708 filed
- 7.29.74 Order Consolidating Cases, Complaint, and Notice of Hearing,
 dated
- 8.5.74 Order Denying Respondent's Request for Postponement of
 Hearing, dated
- 8.8.74 Respondents' Answer, received
- 8.12.74 Respondents' Demand for Bill of Particulars, dated
- 8.19.74 General Counsel's Answer in Opposition to Part of Respondents'
 Demand for Bill of Particulars, dated

- 8.19.74 General Counsel's Bill of Particulars, dated
- 8.19.74 Regional Director's Order Referring Respondents' Demand for Bill of Particulars to the Administrative Law Judge, dated
- 8.20.74 Administrative Law Judge's Order on Respondents' Demand for Bill of Particulars, dated
- 8.23.74 Administrative Law Judge's Order Denying Respondents' Demand for a Bill of Particulars, dated
- 8.29.74 General Counsel's Notice to Produce, dated
- 9.6.74 Order Changing Time of Hearing, dated
- 9.11.74 Hearing opened
- 9.12.74 Hearing closed
- 11.22.74 Administrative Law Judge's Decision issued
- 1.27.75 Respondents' Exceptions to the Decision and Order of the Administrative Law Judge, received
- 6.30.75 Decision and Order issued by the National Labor Relations Board

DECISION

Statement of the Case

JERRY B. STONE, Administrative Law Judge: This proceeding, under Section 10(b) of the National Labor Relations Act, as amended, was tried pursuant to due notice on September 11 and 12, 1974, at Rome, New York.

As to Case 3-CA-5634, the original charge was filed on April 10, 1974, the amended charge was filed on May 31, 1974, and the complaint was issued on June 14, 1974.

As to Case 3-CA-5708, the original charge was filed on June 12, 1974, the first amended charge was filed on July 23, 1974, the second amended charge was filed on July 26, 1974, and the complaint was issued on July 29, 1974.

Cases Nos. 3-CA-5634 and 3-CA-5708 were duly consolidated for hearing by Order dated July 29, 1974.

The issues concern (1) whether Respondents have violated Section 8(a)(1) of the Act by acts of interrogation, statements, threats, promises of benefits, discharges of and refusal to hire certain employees, and refusal to bargain with the Union; (2) whether Respondents have violated Section 8(a)(3) of the Act, by discharges of and refusal to hire certain employees, and (3) whether Respondents have violated Section 8(a)(5) of the Act by refusal to bargain with the Union.

All parties were afforded full opportunity to participate in the proceeding, and the General Counsel and the Respondent have filed briefs which have been considered.

Upon the entire record in the case and from my observation of witnesses, I hereby make the following:

Findings of Fact

I. The Business of the Employer¹

A. Lasaponara & Sons, Inc., herein sometimes called simply Lasaponara, is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York. At all times material herein, Lasaponara has maintained its principal office and place of business at RD No. 1, Phillipsburg Road, in the City of Goshen, and State of New York, herein called the Goshen plant, and at Base Road in the City of Oriskany, and the State of New York, herein called the Oriskany plant, and is, and has been at all times material herein, engaged at said plants and locations in the manufacture and wholesale distribution of cheese and related products. During a recent 1 year period, Lasaponara in the course and conduct of its business operations, manufactured, sold, and distributed at said Oriskany

¹ The facts are based upon the pleadings and admissions therein.

plant, products valued in excess of \$50,000 of which products valued in excess of \$50,000 were shipped from said plant directly to States of the United States other than the State of New York.

ERE Industries, Inc., herein sometimes called simply ERE, is engaged in the manufacture and wholesale distribution of cheese and related products in Medford, Massachusetts. On April 23, 1974, ERE purchased Lasaponara, and Lasaponara became a wholly-owned subsidiary of ERE.

Based upon the foregoing and as conceded by the Respondents, Lasaponara and ERE each is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(5) of the Act.

II. The Labor Organization

Involved²

Mechanics Educational Society of America, AFL-CIO, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act. It is so concluded and found.

III. The Unfair Labor Practices

A. Preliminary Issues

*Supervisory Status*³

At all times material herein, the following-named persons occupied positions set opposite their respective names, and have been and are now agents of Lasaponara and ERE, acting on their behalf, and are supervisors within the meaning of Section 2(11) and 2(13) of the Act.

Frank Oddi-President of ERE-

President of Lasaponara (since April 23, 1974)

² The facts are based upon the pleadings and the narrowing of issues at the hearing.

³ The facts are based upon the pleadings, admissions therein, and statements narrowing the issues at the hearing.

Joseph Lasaponara—President of Lasaponara until April 23, 1974—Sales Manager
Lasaponara since April 23, 1974

Anthony Fazzino—Plant Manager—at Lasaponara Oriskany Plant

John Kosh—Foreman—at Lasaponara Oriskany Plant until April, 1974

B. *The Refusal to Bargain*

1. The parties are in agreement as to the appropriate collective bargaining unit of Respondents' employees involved in this proceeding. Thus, based upon the pleadings and statements (at the hearing) narrowing the issues, it is concluded and found that "all production and maintenance employees, employed by A. Lasaponara & Sons until April 23, 1974, and since that time by A. Lasaponara & Sons, a wholly-owned subsidiary of ERE Industries, Inc., at its Base Road, Oriskany, New York location; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act" constitutes a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

2. The parties stipulated to the effect that there were 20 employees in the appropriate collective bargaining unit, described above, and that 11 of such employees had signed proper union authorization cards, designating the Union as the employees' collective bargaining representative, by on or about December 1, 1973. Accordingly, it is concluded and found that on or about December 1, 1973, a majority of the employees of A. Lasaponara & Sons, Inc., in the unit described above, designated or selected the Union (Mechanics Educational Society of America, AFL-CIO) as their representative for the purpose of collective bargaining with A. Lasaponara & Sons, Inc.

3. The facts reveal that the Union, on December 3, 1973, requested A. Lasaponara & Sons, Inc., to bargain collectively with respect to rates of pay, hours of employment, and other terms and conditions of employment as the

exclusive collective bargaining representative of all of the employees of the Respondent in the bargaining unit described in Sec. III B1 above.

4. A. Lasaponara & Sons, Inc., and ERE Industries, Inc., had been in negotiations since August, 1973, for the sale of controlling ownership interest in A. Lasaponara & Sons, Inc., a family owned corporation, was so involved in December, 1973, continued such negotiations, reached firm understanding as to such sale in March and early April 1974, and completed the sale of such interests to ERE on April 23, 1974.

5. Oneida Development Corporation and its head, a Mr. Zappone, had been instrumental in the initial location by A. Lasaponara & Sons, Inc., of a plant at Oriskany, New York. Such Oneida Development Corporation had an interest and some influence with respect to any sale of ownership interest by A. Lasaponara & Sons, Inc., because of its needed approval of certain financial involvements or releases.

6. The Union, on December 5, 1973, filed a standard NLRB Representative Petition (Case No. 3-RC-5913) with Region 3 of the National Labor Relations Board.⁴

7. The Union, on December 7, 1973, transmitted a letter to A. Lasaponara & Sons, Inc., in which the Union notified the company of certain employees on the Union's organizational committee.

8. Joseph Lasaponara, President of A. Lasaponara & Sons, Inc., contacted Zappone of the Oneida County Development Corporation with respect to the Union letters and petition referred to above, and requested Zappone to contact the Union for the Lasaponara interests.

⁴ Such position invokes the NLRB investigation of questions concerning representation and the holding of elections and issuance of certifications thereto when appropriate.

9. Tom Zappone, of the Oneida Development Corporation, met with union officer Kozma and DeBella on December 10, 1973, told the union officials that the Oneida Development Corporation had built the plant, helped finance the plant, and had been instrumental in bringing Lasaponara into Oneida County. Zappone told the union officials that the Lasaponara Company was involved in discussions with some other company about merging and that an election or union at this time could jeopardize the operation and cause the loss of jobs for 20 people.⁵ The union officials told Zappone that they did not want to drive anyone out of business, that they, however, had to protect the interests of the employees who had joined the Union, that they thought that if they could sit down with the Lasaponara principals, they could work out the problems.

10. Later, a meeting between the union officials and Lasaponara officials was arranged by Zappone for December 12, 1973. At such meeting were Zappone, Joseph Lasaponara and Fazzino for the Company, and Kozma and DeBella for the Union.

The parties discussed the fact that A. Lasaponara & Sons, Inc., was involved in discussions with another company concerning the sale of the ownership interest in A. Lasaponara & Sons, Inc., to another company.⁶ Joseph Lasaponara told the union officials in effect that he had no objection to a union being in his plant, however, that this was not the time for such to be since an election could affect production and upset the sale or merger.⁷

⁵ I credit Kozma's testimony to the effect that the word "merging" was used. Joseph Lasaponara and Fazzino testified to the effect that in the conversations in which they were involved on December 12 and 14, 1974, that the term "merging" was used. What actually was involved was the sale of ownership interest and the merging of the Lasaponara Corporation at the time of such sale into the ERE enterprise as a subsidiary.

⁶ Whether the words "sale" or "merge" was used is not material since I am persuaded that enough details were discussed about the transaction to warrant an interpretation by Kozma and DeBella that the Lasaponara Company was to be merged into the other company.

⁷ The facts relating to the events of December 12 and 14, 1973, are based upon a composite of the credited aspects of the testimony of Kozma, DeBella, Lasaponara and Fazzino, the exhibits (including the December 20, 1973, proposed recognition agreement) and the logical consistency of all of the facts.

The union officials (Kozma and DeBella) told Lasaponara that the question of an election did not present a problem, that there were other ways to handle the question of recognition.⁸ The union officials told Lasaponara in effect that the question of an election would be solved if the company would recognize the Union, give a 25 cent wage increase, and that a contract could be formalized later. Lasaponara inquired at this point as to what the employees were interested in as regards a contract. DeBella, for the Union, made notes of certain proposals, read the proposals to Lasaponara, and Lasaponara made notes of such proposals. Lasaponara and Fazzino⁹ told the union officials that they would think about the proposals and let them know.¹⁰

11. Joseph Lasaponara met with the union officials on December 14, 1973. Lasaponara told Kozma and DeBella that he was not ready to sign a contract at this time, that he did not want a long term but a shorter term contract, that 25 cents an hour increase in wages was too much, and that he could live with 20 cents an hour wage increase if he received credit for it when he bargained for a full contract.

The parties discussed and agreed in effect to a wage increase, continuation of the past practice of wage increases, and the availability of other benefits

⁸ I discredit Lasaponara's testimony to the effect that the union officials indicated an uncertainty as to how to dispose of the representative petition. Fazzino's testimony supports Kozma's and DeBella's testimony as to what occurred. Considering this and the logical consistency of the facts, I find the facts as set forth.

⁹ Fazzino, in addition to being production manager, was an in-law and part owner of the family owned (A. Lasaponara & Sons, Inc.) corporation.

¹⁰ At some point in the discussion, it appears that Lasaponara adverted to the fact that he needed time to complete his merger discussions and that such time needed was estimated to be until some time in February or March, 1974.

to employees in return for Lasaponara's agreement to formally recognize the Union at a future date, April 1, 1973.¹¹

Excepting with respect to the agreement to recognize in the future, more precise details of the agreement reached on December 14, 1973, are revealed by the following credited excerpts from Kozma's testimony:

* * * * *

- A. We thought that we could live with the twenty cents an hour provided of course that he continued the past practice of granting increases every three months and also making the Welfare Program, Hospitalization and what not available to employees after they had been there six months. He also wanted to know if at that time, if the twenty cents an hour would be — if he get credited for it when he negotiated the complete contract.
- Q. Was there a discussion when a complete contract would be negotiated?
- A. Yes, at that meeting and prior meetings there is a time element they thought they had to have and we talked about a February date, a March 1st date and I think on that date, March 1st, we weren't quite sure whether that would be time enough to consummate their negotiation or whatever they were doing and we suggested the middle of March or lets make it April 1st. We told them we could prepare a recognition agreement and withdraw the Petition for an election with the National Labor Relations Board.

¹¹ The fact that the agreement was to formally recognize the Union in the future is based upon a composite of all the credited facts, the credited aspects of Lasaponara's testimony, and the proposed recognition agreement drafted by the Union and presented on December 20, 1973. The overall facts clearly reveal an agreement of recognition. Lasaponara's testimony reveals an agreement to recognize the Union. The proposed draft reveals that the agreement was for future recognition. Considering the logical consistency of all the facts, I discredit Lasaponara's testimony to the effect that ultimate recognition was contingent upon his failure to sell the business.

Q. Did he give any response when you told him that?

A. He said fine, then we will formalize it, we could do that at the plant and we were going to set up a date or we did set up a date for about the 20th and this is going to be formalized where Mr. Fazzino who is the Plant Manager and a brother-in-law to Mr. Lasaponara, would formalize it and we go on from there.

* * * * *

12. On December 20, 1973, union officials Kozma and DeBella and certain employees (Wilson, Muraca, Bonville and Kraeger) met with Production Manager Fazzino. At such time Kozma signed a document relating to recognition, had certain employees to witness the document, and gave the document to Fazzino for transmittal to Joseph Lasaponara. Such document is as herein set out:

RECOGNITION AGREEMENT

by and between

LASAPONARA & SONS, INC.

and

MECHANICS EDUCATIONAL SOCIETY OF AMERICA

AFL-CIO

Effective April 1, 1973, Lasaponara & Sons, Inc. will recognize the Mechanics Educational Society of America, AFL-CIO as the sole collective bargaining agency on behalf of the employees employed at its plant located on Base Road, Oriskany, N.Y. for rates of pay, wages, hours of work and any other conditions of employment.

By

By

WITNESS

Dated day of , 1973

Fazzino told Kozma and the employees that the company was having problems, that it would take time to iron out the problems and that the employees would get 20 cents an hour raise on the day before Christmas. Fazzino also told Kozma and the employees that he would send the "document" to Joseph Lasaponara for signature.

Kozma told Fazzino that Eva Wilson was the chairlady of the employee committee, that if there were any problems, Fazzino should work with her, and gave Fazzino a telephone number for DeBella, told Fazzino that if there were any additional problems that Fazzino could contact DeBella.

13. On December 20, 1973, the Union mailed an executed "withdrawal request" (in Case 3-RC-5913) to the Regional Director for Region 3 of the NLRB, and said "withdrawal request" was approved by the Regional Director on December 26, 1973, the date of the scheduled hearing in such representation proceeding.

14. On December 24, 1973, the Respondent put into effect the 20 cents an hour raise increase previously referred to.

15. On January 14, 1974, the Union sought withdrawal of a representation petition concerning Respondent's employees that it had filed with the New York State Labor Department. Such request was granted on February 8, 1974.

16. In the meantime, during mid-December, the last of December, 1973, and the first of January, 1974, the Respondent, by its agents Joseph Lasaponara and Fazzino, interfered with, restrained, and coerced employees in the exercise of Section 7 rights, and thereby violated Section 8(a)(1) of the Act by interrogating employees as to why they wanted a union, and by telling employees in effect that they could not get raises because of the pendency of the union question.¹²

¹² Such conduct, and other conduct violative of Section 8(a)(1) of the Act, is set out in Section III C of this Decision.

17. As to the proposed written agreement for recognition and Lasaponara's failure to return the instrument in an executed state, I note the following. Union official DeBella telephoned Production Manager Fazzino shortly after January 1, 1974, and inquired as to why he had not received such instrument. Fazzino told DeBella that because of the holidays there had been a delay, that he had not been able to get the document to Joseph Lasaponara, that he would do so, and that the Union would be hearing from Lasaponara.

On February 5, 1974, DeBella for the Union spoke to Fazzino about some employee complaints concerning health insurance coverage and the fact that some employees had not received their automatic wage increase. On such occasion DeBella again spoke to Fazzino about the fact that the Union had not received the executed "agreement to recognize." Fazzino told DeBella that he did not receive an executed agreement, that it must be because Joseph Lasaponara had been busy.¹³

On February 6, 1974, DeBella contacted Zappone, for the Oneida Development Corporation, and requested help in arranging a meeting with Lasaponara. Zappone indicated that he would and later indicated that he was unable to arrange a meeting at the time.¹⁴

18. In the meantime Joseph Lasaponara was in contact with Oddi, President of ERE, during the middle of January, 1974. Lasaponara told Oddi that there had been some union activities but that the same was under control.

¹³ Fazzino testified to the effect that this conversation took place on January 25, 1974. The exact timing does not appear material. I found DeBella, however, to appear to be a more accurate witness, and find the facts as set forth.

¹⁴ Kozma, the other union official, was away on vacation for several days after December 20, 1973, was back for approximately 3 weeks in January, 1974, and was on vacation in February, 1974. Kozma left the question of following up as to the "recognition" to DeBella.

19. Around February 28 or March 1, 1974, DeBella again contacted Fazzino of the Respondent and discussed the question of a layoff of certain employees, including several of the employees on the union committee. The gist of DeBella's conversation was a contention that the layoff was improper, that the girls could not be laid off because they were for the Union, that the girls could not be laid off because of sex, and that the Respondent should reconsider or the Union would file charges.

Fazzino discussed the matter with Joseph Lasaponara, and the "layoff" was not effectuated.¹⁵

20. On March 5, 1974, DeBella, for the Union, spoke to Joseph Lasaponara about grievances, employee problems concerning insurance, automatic wage increases, and a "proper rate" for one employee. Lasaponara suggested that DeBella put these grievances in writing. DeBella, thereafter, on March 8, 1974, gave Fazzino a letter dated March 8, 1974, referring to such grievances for deliverance to Joseph Lasaponara.

In the meantime, Joseph Lasaponara was in contact with Oddi, for ERE, and related the fact that the Union was contacting the Respondent concerning grievances. Oddi told Lasaponara, in effect, to be very careful, that he was not authorized to bind ERE Industries without their knowing about the matter.

DeBella later attempted to contact Joseph Lasaponara. Being unsuccessful in contacting Lasaponara, DeBella contacted Zappone, of the Oneida Development Corporation. Zappone told DeBella in effect about Oddi, and ERE Industries' involvement in the purchase of the ownership interests in Lasaponara, and gave DeBella a telephone number for contacting Oddi.

¹⁵ The question of whether the proposed layoff was discriminatory is not an issue.

DeBella, around April 1, 1974, placed a telephone call to Oddi, did not reach Oddi himself, but left a message for Oddi to call DeBella. Oddi was apprised of such telephone call, knew that the call was from the Union, and did not call DeBella or the Union.

21. As has been indicated, A. Lasaponara & Sons, Inc., and ERE Industries Inc., had been in negotiations since August, 1973, as to the sale or purchase of the ownership interests in A. Lasaponara & Sons, Inc. The final closing of such transaction was supposed to be in March, 1974. The facts are revealed in effect by the following credited excerpts from Oddi's testimony.

* * * * *

- A. Yes. The finite closing was to have taken place in March of 1974. To elaborate a little if you wish me to, the closing was to have taken place earlier than that but for reasons I could go into or not, it did not but the papers were finally prepared and signed on March the 6th, March the 7th, 1974, pending receipt of one document which was of critical importance and without that document this closing would not have been completed. So why we were waiting for that document, everything had been signed and was held in escrow and the — then the document was finally received and escrow dispursed on April 23rd.

* * * * *

22. In the meantime, on March 27, 1974, Oddi addressed the employees of A. Lasaponara & Sons, Inc., told them in effect that he would be the new president of A. Lasaponara & Sons, Inc., and that the benefits of the parent company, ERE Industries, Inc., would be extended to employees of A. Lasaponara & Sons, Inc. Oddi told the employees in effect that some of the changes would be effective as of May 1, 1974, and that the others would be effectuated at a later date.

23. On May 1, 1974, as Oddi had told the employees, certain changes in benefits were placed in effect. Since that date and prior to September 11, 1974, other changes in benefits have been effected so as to extend the employee benefits of the parent company to the employees of A. Lasaponara & Sons, Inc. Thus, it is clear that the Respondents have changed the benefits of employees of A. Lasaponara & Sons, Inc., as regards holidays, sick days, bereavement, health and life insurance.¹⁶

Conclusions

The General Counsel alleges and contends that (1) A. Lasaponara & Sons, Inc., on December 14, 1973, voluntarily recognized the Union as the exclusive collective bargaining representative of the employees in the appropriate bargaining unit; (2) A. Lasaponara & Sons, Inc., on or about early April, 1974, withdrew recognition from the Union; and (3) that A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc., refused to bargain collectively with the Union by unilaterally changing conditions of employment.

The Respondent contends in effect that the Union agreed to abandon and did abandon its bargaining rights in December, 1973 and January, 1974, and that ERE was unaware of what had transpired and therefore was not obligated to bargain with the Union as to the "unilateral" changes.

¹⁶ The exact details are not important since such details are a matter easily determined in compliance. I note as an example that the General Counsel contends that vacation benefits were changed. Although employee Wilson testified to the effect that the employees were told about vacation benefits, the evidence does not reveal what, if any, were the former vacation benefits.

Considering all of the foregoing, I find that the facts support the General Counsel's contentions and do not support the Respondent's contentions. Thus, the facts reveal that the Union was designated as the collective bargaining representative by a majority of the employees in the appropriate bargaining unit. The facts are clear that the employing entity, in December, 1973, had no question as to the union's majority status but in fact agreed that such status existed. Thus, the employer's action in agreeing to recognize the Union in the future, without other evidence as to majority status, clearly fixes the Union as the recognized exclusive collective bargaining agent of the employees involved. Contrary to Respondent's contentions, the facts do not reveal that the Union abandoned or agreed to give up bargaining rights. The withdrawal of representation petitions under the circumstances of agreements to recognize do not reveal abandonment or waiver of bargaining rights. Rather, the facts reveal that the employer and union agreed to keep the matter of formal recognition and formal contracts in abeyance until the "sale" or "merger" of the employer's controlling ownership interest had been determined. The credited facts reveal that the employing entity has remained the same and that the obligation to recognize the Union has continued. Since the agreement to hold formal recognition and formal contracts in abeyance was contingent upon the "sale" or "merger" completion, and since such act of "sale" or "merger" occurred on April 23, 1974, the employing entity's action in ignoring the Union with respect to bargaining and in making unilateral changes in employment conditions on May 1, 1974, and thereafter, was tantamount to a withdrawal of its recognition that the Union was the exclusive bargaining representative of the employees in the appropriate unit, and constituted a bypassing of the exclusive collective

bargaining representatives as to such unilateral changes. Such conduct is violative of Section 8(a)(5) and (1) of the Act. It is so concluded and found.¹⁷

*C. Interference, Restraint and
Coercion*¹⁸

1. *Threat of Reprisal*

The General Counsel alleges and contends that the Respondent, by John Kosh, on or about November, 1973, suggested to an employee that it would be futile to give any assistance or support to the Union.

The facts reveal and the parties do not dispute that Kosh was a supervisor of the Respondent at the time involved. The Respondent contends in effect that Kosh was not clothed with authority to engage in bargaining negotiations or to make statements on its behalf in such regard. As a supervisor, it is clear, however, that Kosh is an agent within the meaning of the Act for the type of conduct engaged in by him in this case.¹⁹

¹⁷ The Respondent found to have violated Section 8(a)(5) and (1) of the Act is A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc. ERE Industries, Inc. was not alleged to have violated the Act in such regards.

¹⁸ Although the General Counsel in the complaint in Case 3-CA-5708 alleges in effect that both A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc. and ERE Industries, Inc. are Respondents liable for certain specific 8(a)(1) conduct, the facts and allegations involved in Section III C reveal that the conduct involved was conduct of A. Lasaponara & Sons, Inc. and not that of ERE Industries, Inc. Allegations to the effect that ERE Industries, Inc. is responsible for such 8(a)(1) conduct will be recommended to be dismissed. The Respondent responsible for the specific 8(a)(1) conduct found herein is A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc.

¹⁹ See *The Rust Forge Company*, 201 NLRB 393, 394.

Bartle credibly testified to the effect that Kosh, in November, 1973, stated that it would not be permitted for a union to come in if a union were trying to come in. By such statement, the employee was told in effect that if a union were trying to organize the employees, it would be futile for the employees to select the Union since the employer would not accept the Union as an agent for the employees. By such conduct the Respondent engaged in conduct violative of Section 8(a) (1) of the Act. It is so concluded and found.

2. *Joseph Lasaponara: Interrogation,
Threats of Reprisals,²⁰ Promise of
Benefits*

In the middle of December and at the end of December, 1973, Joseph Lasaponara held meetings in his office with employees, two at a time, in which he admittedly spoke to such employees about the fact that A. Lasaponara & Sons, Inc., was a family run company and inquired as to why they wanted a union and thought they needed a union.

The foregoing is not disputed. What is disputed is whether Joseph Lasaponara, at some of the meetings, made threats of reprisals or promises of benefits concerning the Union.

Eva Wilson credibly testified to the effect that Joseph Lasaponara, at one of the mid-December meetings, told her and Peck that he could not give them raises as long as they were negotiating with the Union. Bonville credibly testified to the effect that Joseph Lasaponara, at one of the mid-December meetings, told him and Radley in effect that if they helped the Union or wanted the Union, he would fix them. Kraeger credibly testified to the effect that Joseph Lasaponara, at one of the meetings at the end of December, told him

²⁰ The facts are based upon a composite of the credited aspects of the testimony of Eva Wilson, Smith, Peck, Bartle, Bonville, and Joseph Lasaponara.

and Culver in effect that if they helped the Union or wanted the Union, he would fix them.²¹ Bartle credibly testified to the effect that Joseph Lasaponara told him and Wyckoff that if they would vote no on the Union, he could go ahead and give them the benefits that they were entitled to.

Joseph Lasaponara testified in conclusionary effect that he made no threats of reprisals or promises of benefits to the employees. Considering the factual detail presented by the testimony of Wilson, Kraeger, Bonville, and Bartle, I am persuaded that their testimony is more complete, objective and reliable than that of Lasaponara and credit such testimony over Lasaponara's where in conflict.

Considering the foregoing, I am persuaded and conclude and find that the Respondent, as alleged, interrogated its employees in mid-December, 1973, about their union desires, in a manner constituting interference, restraint, and coercion within the meaning of Section 8(a) (1) of the Act.²² Such conduct is conduct violative of Section 8(a) (1) of the Act. It is so concluded and found.

Considering the foregoing, I am persuaded and conclude that the Respondent, by Lasaponara's statements to Wilson and Peck concerning inability to give raises because of pending union negotiations, and to Bonville and Radley and to Kraeger and Culver to the effect that if they helped or wanted the Union, he would fix them, engaged in threats of reprisals to employees to cause such employees to desist from union activity. Such conduct is violative of Section 8(a)(1) of the Act. It is so concluded and found.

²¹ Bonville's and Kraeger's testimony was in more pungent and descriptive detail. The meaning is as set forth.

²² The Respondent's contention that the interrogation and conversations were not coercive is rejected. As indicated, the facts reveal threats of reprisals. Further, the total text of the conversations do not reveal any assurances of non-reprisals, and reveal dissatisfaction with the employee union interests.

Considering the foregoing, I am also persuaded that the evidence relating to the remarks by Joseph Lasaponara to Bartle and Wyckoff — to the effect that if they would vote no on the Union, he could go ahead and give them the benefits that they were entitled to — constituted a threat of reprisal to employees because of or if they selected a union. Such statement, at first blush, may appear to have two meanings. One meaning may be said to be a threat that a benefit is not forthcoming because of union consideration. The other meaning may be said to be a promise of a benefit if the union considerations adverse thereto were removed. Since the statement by Lasaponara referred to benefits to which the employees were entitled, I am persuaded that the statement should be construed as a threat of reprisal. I note further that Bartle's testimony places the timing of such statement as being in mid-December, 1973, and that there is no allegation of improper "promise of benefit" relating to the events of mid-December, 1973. At the trial of this matter, the General Counsel contended that Bartle's testimony in such regard related to an alleged "promise of benefit" which allegedly occurred in January, 1974. I am persuaded that this contention is in error and that no evidence was presented with respect to the alleged violative conduct of a "promise of benefit" by Joseph Lasaponara, occurring in January, 1974. The facts, excluding the testimony of Bartle, already clearly establish that the Respondent, by Joseph Lasaponara, made unlawful threats of reprisals in violation of Section 8(a)(1) of the Act. Since the Respondent, by pre-trial motions, has acted diligently to have the issues presented squarely, since the General Counsel's complaint included allegations of improper promises of benefits by Joseph Lasaponara in January, 1974, and since the General Counsel, at the trial, contended such evidence, by Bartle, in support of the allegations of "unlawful promise of benefits," I do not think that due process would be served by a finding that Bartle's testimony as to Joseph Lasaponara's statement, a threat of reprisal, constituted

a separate incident of alleged mid-December, 1973, misconduct in such regard. Further, since the evidence does not support an allegation of improper promises of benefits, by Joseph Lasaponara, in January, 1974, recommendation will be made that such allegation be dismissed.

3. *Anthony Fazzino*

Interrogation

A composite of the credited aspects of the testimony of Marcelletta and Smith reveals that Production Manager Fazzino questioned them during the week of January 8, 1974, about the signing of union cards. What occurred is revealed in effect by the following excerpts from the testimony of Smith.

* * * * *

A. Karen and I went in there to ask why he was in such a bad mood and he told us since we wanted to treat him bad that he was going to treat us the same way, that he was going to act like a boss should act.

Q. Is that all that was said during that conversation?

A. No, then he asked Karen and I who signed Union Cards and we told him we didn't know. He said its okay, he knew who signed them and asked if Karen, me and Pete Muraca started the union and we said no, and he said he knew who started it.

* * * * *

Bartle credibly testified to the effect that Production Manager Fazzino questioned him, around March 1, 1974, about the occurrence of a union meeting. What occurred is revealed in effect by the following credited excerpts from Bartle's testimony:

* * * * *

A. I believe I did but Tony Fazzino asked me — it was about girls being layed off and —

Q. The layoffs that occurred in late February, layoffs of Marge Peck and Eva Wilson?

A. Yes, I remember it now and ask me if the union meetings had taken place and I told him that if there has been a union meeting that I would have been notified. I told him that there was no union meeting.

* * * * *

Considering the foregoing, it is clear and I conclude and find that the Respondent, by Fazzino, as alleged, engaged in coercive interrogation of employees about union activities of employees. Such conduct is violative of Section 8(a) (1) of the Act. It is so concluded and found.

4. *Threats*

The General Counsel alleges and contends that the Respondent violated Section 8(a) (1) of the Act (interfered with, restrained, and coerced employees in the exercise of protected concerted activities) by the conduct of Production Manager Fazzino, on April 5, 1974, in crumpling a petition protesting the scheduling of work and in informing an employee that she was a troublemaker after she presented the petition to him.

The facts are undisputed excepting as to whether Fazzino called Eva Wilson a troublemaker. Wilson was a more impressive witness than Fazzino. I found her to appear more objective, frank and forthright in her testimonial demeanor than I did Fazzino. I credit her testimony over Fazzino's where such testimony is in conflict.

The facts ²³ reveal that Wilson gave Fazzino, on April 5, 1974, a petition relating to the scheduling of work on Palm Sunday. ²⁴

Such petition was as is herein set out.

WE, THE UNDERSIGNED MEMBERS OF MECHANICS EDUCATIONAL SOCIETY OF AMERICA, AFL-CIO (M.E.S.A., AFL-CIO), EMPLOYEES OF LASAPONARA & SONS, INC. HAVE BEEN ADVISED THAT PALM SUNDAY APRIL 7, 1974 HAS BEEN SCHEDULED AS A DAY OF WORK.

Since this is a religious holiday that is important to us, we request that this schedule be rescinded.

In the event that this schedule is not changed, you are advised that we will not report for work on Palm Sunday, Apr. 7, 1974, but will report to work on Monday, April 8, 1974.

/s/Eva Wilson
/s/Gary Bartle
/s/Marge Peck
/s/Dick Hayes
/s/Douglas
/s/John Tartaglia
/s/Norman C. Bolton
/s/Patricia J. Wilson
/s/Douglas A. Hitts
/s/Lindsey K. Wyckoff
/s/Robert J. Kraeger
/s/Bill Bonville

Dated,

²³ The facts are based upon a composite of the credited testimony of Wilson, Peck and Fazzino. As indicated, I credit Wilson's and Peck's testimony to the effect that Fazzino called Wilson a troublemaker. I discredit Fazzino's testimony to the effect that he did not call Wilson a troublemaker.

²⁴ I found Peck's overall testimony to the effect that the incident occurred on April 5, 1974, to be the most believable and reliable as to the timing of the presentation of petition.

What occurred at the time of the presentation of the petition is revealed in effect by the following excerpts from Wilson's testimony:

* * * * *

- A. Yes, I gave him the petition and told him those are the list of names that the union wrote a petition, we didn't want to work Palm Sunday. He got kind of mad and crumbled it up and threw it on the floor and wanted to hear it from everybody's mouth. He got us together and asked us if we would work and we said no, except Pat Wilson and he said he was going to turn our names into Boston whoever didn't work.

Q. Any remarks during this conversation directed to you?

- A. Yes, he said I was a troublemaker.

* * * * *

Considering all of the foregoing facts, I am persuaded and conclude and find that the Respondent, by Fazzino's conduct in crumpling the petition (concerning the scheduling of hours for Palm Sunday) and in calling Eva Wilson a troublemaker, engaged in conduct violative of Section 8(a) (1) of the Act. Such conduct, in the context of a previous understanding of the handling of grievances and a contemporaneous avoidance of such understanding, reveals a rejection of the principles of collective bargaining and a singling out of the Union's spokesman for an implied threat of reprisal. Accordingly, as indicated, it is concluded and found that such conduct is violative of Section 8(a) (1) of the Act.

D. Discriminatory Refusal to

Hire Muraca - May 27, 1974

Peter Muraca was working for A. Lasaponara in November, 1973. In November, 1973, Muraca signed a card authorizing the Union (Mechanics Educational Society of America, AFL-CIO) to be his collective bargaining representative.

Later the Union put Muraca on its shop organizational committee and so notified A. Lasaponara & Sons, Inc., by letter, dated December 7, 1973. As a part of such shop committee, Muraca met with the union representatives, other members of the committee, and Fazzino on December 20, 1973, when the Union gave Fazzino a document relating to recognition of the Union.

The last day that Muraca worked for A. Lasaponara & Sons, Inc., was on December 21, 1973. Muraca was given a 2 weeks suspension as of December 26, 1973, and received his final pay and was terminated around January 21, 1974. Although the exact details as to what occurred may be in some dispute, there is no contention that the suspension for 2 weeks, or the termination around January 21, 1974, were for discriminatory reasons within the meaning of the Act.

Later there appears to have arisen some problems concerning the receipt of unemployment pay by Muraca. It is clear, however, that there is no evidence to relate such problem to the refusal of the Respondent to rehire Muraca on May 27, 1974.

As the instant record reveals, the Union filed unfair labor practice charges in Case 3-CA-5634 concerning the instant allegations of refusal to bargain. The record further clearly reveals that the investigation of such charges were pending and being processed in May, 1974.

The only evidence relating to Muraca's attempt to secure employment from the Respondents on May 27, 1974, consists of the testimony of Muraca. I credit such testimony, and the facts as to what occurred on May 27, 1974, are revealed by the following credited excerpts from Muraca's testimony: ²⁵

²⁵ Fazzino did not testify to these events of May 27 and June 10, 1974, nor did he testify as to why he would not rehire Muraca at such time. Rather, Fazzino's testimony was directed to the validity of the January 21, 1974 discharge.

* * * * *

A. Well, on the 27th I had been on unemployment for a while and I wanted to get back to work. I was telling Lindsey Wyckoff if I could get back to work, he said the best thing would be is to go back to the plant and talk to him. On May 27th I went to the office and talked to Tony and asked Tony if I could have my job back and he said, Pete, I know we need people, I have to wait until this union things get settled, I said what does this have to do with me and he said you got me in trouble and some guy from the Board had a meeting with him and some guy Oddi and I don't see what this has to do with me and if I am a good worker and need help, I don't know why I can't get work. He said he would call me so I left.

Q. Did he call you?

A. No.

Q. Did you ever return to the plant after that?

A. On June 10th, I went back there and went in the office and talked to Tony and asked Tony could I have my job back. He said I will have to talk to Oddi and at this time I noticed he was hiring all these new people and I noticed them and I asked Tony what is this, you hired all these other people and you don't give me a call to give me a job, he said we need help and he would have to talk to Oddi and would call me. I left again and never got a call.

* * * * *

Considering all of the foregoing, I am persuaded and conclude and find that the Respondents refused to hire Muraca on May 27, 1974, and thereafter, because of knowledge of his adherence to the Union and the pending unfair labor practice charges and union claims as an exclusive collective bargaining

representative. Thus, it is clear that the Respondents knew Muraca was a union supporter and was basing its consideration upon union considerations and the pendency of NLRB charges. Under such circumstances, the selection for employment is one based upon discriminatory considerations. Accordingly, it is concluded and found that the Respondent violated Section 8(a)(3) and (1) of the Act by discriminatorily refusing to hire Muraca on May 27, 1974, and thereafter.²⁶

E. *The June 7, 1974 Discharges*

As indicated previously, Eva Wilson, the chairlady of the Union shop committee, on April 5, 1974, presented a petition requesting the rescinding of the scheduling of hours of work on a religious holiday, Palm Sunday, to Production Manager Fazzino. Also, as indicated previously, Fazzino crumpled the petition, called Wilson a troublemaker, and then ascertained which employees would say that they would work on Palm Sunday. Later, on April 6, 1974, DeBella, for the Union, and Fazzino discussed the petition, the fact that Fazzino had called Wilson a troublemaker concerning the petition, Wilson's right to present the petition, a suggestion by DeBella that the employees would be willing to work overtime during the week to make up for the Sunday hours, and Fazzino's problems and need for production and time for distribution.

²⁶ The General Counsel's complaint alleged in effect that both A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc. and ERE Industries, Inc. were the Respondents responsible for the discriminatory refusal to hire Muraca on May 27, 1974. Since ERE Industries, Inc., had acquired ownership control of A. Lasaponara & Sons, Inc., since Oddi, president of ERE became president also of A. Lasaponara, and since local management looked to ERE for top management and handling of labor relations, I find that the Respondents' operations were intertwined and in effect a single employer for the purpose of Section 8(a) (3) of the Act.

Fazzino told DeBella in effect that if the employees did not want to work, he could not force them to work.

Around April 5, 1974, Fazzino spoke to Oddi, president of ERE Industries, Inc. What occurred is revealed by the following selected excerpts from Oddi's testimony:

* * * * *

- A. This would have been my recollection, is that he either called me on the Thursday or Friday that it happened and in short there was this threat of absenteeism during this period and I said first keep in mind that I am not the owner of this company nor do I have any authority in it and therefore, no responsibility so whatever you do, is really your own decision. However, my suggestion is that because some people apparently have responded, they will come in, why don't you wait and see how many do come in and make the best of it as you possibly can. At that point, he really had little alternative.

* * * * *

On Palm Sunday, April 7, 1974, employees Eva Wilson, William Bonville, Robert Kraeger, Margaret Peck, Richard Hayes, Gary Bartle, and Douglas Hitts did not work. Said employees however returned to work on April 8, 1974. Later, Hitts was terminated for reasons unimportant to the issues in this case. The other named employees continued to work until June 7, 1974.

A. Lasaponara & Sons, Inc., took no action and made no statements to the above-named employees from April 7, 1974, until the date that ERE Industries, Inc., obtained ownership interest on April 23, 1974. Thereafter, A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc., took no action and made no statements to the above-named employees until June 7, 1974. At this time, Oddi, president of ERE Industries, Inc., and president of A. Lasaponara, instructed Fazzino to terminate such employees because

they had refused to work on Palm Sunday. Thereupon, Fazzino terminated the employment of Eva Wilson, William Bonville, Robert Kraeger, Margaret Peck, Richard Hayes, and Gary Bartle. Fazzino told such employees that they were being terminated because they had refused to work on April 7, 1974, Palm Sunday.

In addition to the foregoing, the following facts are noted.²⁷ (1) Prior to 1974, A. Lasaponara & Sons, Inc., customarily worked on Palm Sunday with respect to production needs for the oncoming Easter week. (2) The employees gave notice only as of April 5, 1974, of their intended refusal to work on April 7, 1974. (3) The employees evidenced no intent to engage in repeated or intermittent refusals to work. (4) The Respondent did not question the employees as to their future intentions regarding such work or similar work. (5) The facts reveal that Eva Wilson, William Bonville, Robert Kraeger, Margaret Peck and Gary Bartle all had signed union cards by December 1, 1973, that Wilson, Kraeger, Bonville, Muraca and Peck were on the union organizational or shop committee, as notified to the Respondent on December 7, 1973, and that Wilson, Kraeger and Bonville were with the union representatives on December 20, 1973, in the meeting with Fazzino.

Further, on Monday, April 8, 1974, Production Manager Fazzino telephoned Oddi, president of ERE Industries, Inc., and told him about the employees who had not worked on Palm Sunday. Oddi told Fazzino that he (Oddi) had no authority to tell him what to do at the time (since ownership by ERE of A. Lasaponara had not been acquired at this time), suggested that he do nothing but let him (Oddi) investigate and get expert advice, and that he would later let Fazzino know what should be done.²⁸

²⁷ The facts are based upon a composite of the credited aspects of all the witnesses' testimony.

²⁸ The facts are based upon a composite of the credited aspects of the testimony of Fazzino and Oddi.

Oddi contacted his attorney about the legal ramifications of the employees' refusal to work on Palm Sunday. Oddi's attorney suggested that he contact other counsel about this matter and ultimately instructed Fazzino to discharge the employees who had refused to work on Palm Sunday as is revealed by the following credited excerpts from Fazzino's testimony.

* * * * *

- A. He told me that the people never came to work on Palm Sunday to be dismissed and I asked Mr. Oddi what reason, because I forget about -- about Palm Sunday and he said, tell the people they were dismissed for not reporting to work when we needed them.

* * * * *

Contentions

Conclusions

The General Counsel alleges and contends that the Respondents discharged Wilson, Bonville, Kraeger, Peck, Hayes and Bartle on June 7, 1974, because of their union activities and because they engaged in protected concerted activities. I am persuaded from the statements of Counsel, the cases cited, and the facts as a whole, that the real issue presented is whether the employees were discharged because of their protected concerted activities. I would note, however, that the overall facts make it suspicious that the union activities of the employees might be a part of the motivation for the June 7, 1974, discharges. Thus, most of the discharged employees had engaged in union activity which was known to the Respondents, and the unfair labor practice charges relating to the refusal to bargain issues were pending. Respondents have, one or the other or both, engaged in conduct violative of Section 8(a) (1) of the Act, have refused to bargain with the Union in violation of Section 8(a)(5) of the

Act, and have discriminated in the employment of Muraca on May 27, 1974, based upon union considerations of the union activities of the employees, a desire to destroy the Union, and a utilization of a belief of an unprotected concerted activity as a pretext. However, I am persuaded that the overriding nature of the "protected concerted" activity issue makes a finding that the discharges were for discriminatory reasons somewhat speculative. Accordingly, it will be recommended that the allegation of conduct violative of Section 8 (a) (3) be dismissed.

Considering all of the facts, I am persuaded and conclude and find that the employees' refusal to work on April 7, 1974, Palm Sunday, was a protected concerted activity. Such refusal to work constituted a strike of limited duration and was unaccompanied by evidence of an intent to engage in repeated or intermittent strikes. Board case law reveals that when an employee engages in a strike of limited duration, a one time **strike** is presumed to be protected unless there is evidence of an intent to engage in repeated or intermittent strikes. In such a limited and one time strike, the employee is not attempting to enjoy the benefits of a strike without the detriments of a strike.²⁹ Such is the case here. The facts are undisputed that the Respondent discharged Wilson, Bonville, Kraeger, Peck, Hayes and Bartle on June 7, 1974, because they refused to work on Palm Sunday, April 7, 1974. Accordingly, it is concluded and found that the discharge of employees for their protected concerted refusal to work on April 7, 1974, constituted conduct violative of Section 8(a)(1) of the Act.³⁰

²⁹ *Polytech Incorporated*, 195 NLRB 695.

³⁰ It is not necessary to determine whether Respondent's conduct in waiting from April 7, 1974 to June 7, 1974, to discharge the employees constituted "condonation" of such refusal to work. If necessary, however, I would make such a finding. Thus, between April 8, 1973, and April 23, 1974 the authority to discharge employees was in the hands of the officials of A. Lasaponara & Sons, Inc. at that time. Such officials took no action and, in fact, Fazzino, part owner and Production Manager, obviously forgot the events of April 7, 1974. Such conduct revealed condonation in fact. As indicated elsewhere, I find that the Respondents' business was intertwined, a single employer in effect, and that both are responsible for the June 7, 1974, discharges of employees.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondents set forth in section III, above, occurring in connection with the Respondents' operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the Respondents have engaged in unfair labor practices, it will be recommended that the Respondents cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It having been found that the Respondents refused to hire Peter Muraca on May 27, 1974, in violation of Section 8(a)(3) and (1) of the Act, the recommended Order will provide that Respondents offer him employment in the position for which he was discriminatorily considered, or to a substantially equivalent position if such position no longer exists, and make him whole for loss of earnings within the meaning and in accord with the Board's decisions in *F.W. Woolworth Company*, 90 NLRB 289; *Isis Plumbing & Heating Co.*, 138 NLRB 716, except as specifically modified by the wording of such recommended Order.

It having been found that the Respondents discharged Eva Wilson, William Bonville, Robert Kraeger, Margaret Peck, Richard Hayes and Gary Bartle on June 7, 1974, in violation of Section 8(a)(1) of the Act, the recommended Order will provide that Respondents offer each reinstatement to his or her former position or if such position is not available, to a substantially equivalent position, and make each whole for loss of earnings within the meaning

and in accord with the Board's decisions in *F.W. Woolworth Company*, 90 NLRB 289; *Isis Plumbing & Heating Co.*, 138 NLRB 716, except as specifically modified by the wording of such recommended Order.

Having found that the Respondent, A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc., unlawfully, unilaterally made changes in its benefits including at least in part holidays, sick days, bereavement, health and life insurances, it will be required, if requested by the Union, to rescind such changes, provided however that, absent such request, there is no requirement for a rescinding of such changes in benefits.

Having found that the Respondent, A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc., has refused to bargain collectively with the Union, it will be recommended that the Respondent, A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc., upon request, bargain with the Union as the exclusive representative of its employee in the appropriate unit.

Since A. Lasaponara & Sons, Inc. is a wholly owned subsidiary of ERE Industries, Inc. and the employees involved are directly employed by such subsidiary corporation, I am persuaded that the normal posting of a remedial notice by said subsidiary adequately disposes of such remedial requirement in such regard, and thereby shall recommend the posting of such remedial notice only by A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc.

Because of the character and scope of the labor practices herein found, the recommended Order will provide that the Respondents cease and desist from any other manner interfering with, restraining, and coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

Conclusions of Law

1. A. Lasaponara & Sons, Inc., at all times relevant prior to April 23, 1974, and A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc., subsequent to April 23, 1974, and ERE Industries, Inc. each, at all times relevant herein, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Mechanics Educational Society of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing to hire Peter Muraca on May 27, 1974, the Respondents have discouraged union membership by discriminating in regard to tenure of employment, thereby engaging in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

4. By discharging Eva Wilson, William Bonville, Robert Kraeger, Margaret Peck, Richard Hayes, and Gary Bartle on June 7, 1974, the Respondents have interfered with, restrained and coerced employees in the exercise of Section 7 rights and have thereby violated Section 8(a)(1) of the Act.

5. All production and maintenance employees, employed by A. Lasaponara & Sons, Inc., (a wholly owned subsidiary of ERE Industries, Inc., since April 23, 1974) at its Base Road, Oriskany, New York, location; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

6. At all times on and after December 1, 1973, the Union has been the exclusive representative of all the employees in said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

7. By making unilateral changes in conditions of employment of the employees in the above unit around May 1974, the Respondent, A. Lasaponara &

Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc., has refused to bargain with the Union and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

8. By interfering with, restraining and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent, A. Lasaponara & Sons, Inc., (a wholly owned subsidiary of ERE Industries, Inc., since April 23, 1974) has engaged in unfair labor practices proscribed by Section 8(a)(1) of the Act.

9. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER³¹

A. Respondent, A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating employees concerning their union membership, activities or desires.

(b) Threatening employees with reprisals to dissuade them from supporting the Union.

(c) Refusing to bargain collectively with the Union as the exclusive collective bargaining representative of the employees in the bargaining unit herein found to be appropriate.

³¹ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions and Order, and all objections thereto shall be deemed waived for all purposes.

(d) Refusing to hire, discharging or otherwise discriminating against employees in regard to hire or tenure of employment or any term or condition of employment, in order to encourage or discourage membership in any labor organization or to interfere with, restrain or coerce employees in the exercise of Section 7 rights, except to the extent that such rights may be affected by lawful agreements in accord with Section 8(a) (3) of the Act.

(e) In any other manner interfering with, restraining or coercing the employees of A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc., in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by lawful agreements in accord with Section 8(a)(3) of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Upon request, bargain with Mechanics Educational Society of America, AFL-CIO, as the exclusive collective bargaining representative of its employees in the unit herein found appropriate and embody any understanding reached in a signed agreement. The appropriate bargaining unit is "all production and maintenance employees, employed by A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc., at its Base Road, Oriskany, New York, location; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act."

(b) If requested by the Union, rescind the unilateral changes made around May, 1974, and thereafter in benefits of employment of the employees in the appropriate bargaining unit found herein — provided, however, absent such request by the Union, that there is no requirement for a rescinding of such changes in benefits.

(c) Offer to Peter Muraca immediate employment to the position for which he was discriminatorily considered on May 27, 1974, or if such position no longer exists, to a substantially equivalent position, and make him whole for

any loss of pay suffered by reason of the discrimination against him in the manner described above in the section entitled "The Remedy."

(d) Offer Eva Wilson, William Bonville, Robert Kraeger, Margaret Peck, Richard Hayes, and Gary Bartle immediate and full reinstatement to his or her former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to seniority or other rights previously enjoyed, and make each whole for any loss of pay suffered by reason of their unlawful discharge in the manner described above in the section entitled "The Remedy."

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay under the terms of this recommended Order.

(f) Post at it's place of business at Base Road, Oriskany, New York, copies of the attached notice marked "Appendix."³² Copies of said notice, on forms provided by the Regional Director for Region 3, after being duly signed by said Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by said Respondent for 60 consecutive days thereafter, on conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by said Respondent to insure that said notices are not altered, defaced or covered by any other material.

³² In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(g) Notify the Regional Director for Region 3, in writing, within 20 days from the date of the receipt of this Order, what steps the Respondent has taken to comply herewith.

B. Respondent, ERE Industries, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Through and with its subsidiary, A. Lasaponara & Sons, Inc., refusing to hire, discharging or otherwise discriminating against employees in regard to hire or tenure of employment or any term or condition of employment, in order to encourage or discourage membership in any labor organization or to interfere with, restrain or coerce employees in the exercise of Section 7 rights, except to the extent that such rights may be affected by lawful agreements in accord with Section 8(a)(3) of the Act.

(b) Through and with its subsidiary, A. Lasaponara & Sons, Inc., in any other other manner interfering with, restraining, or coercing the employees of A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc., in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by lawful agreements in accord with Section 8(a)(3) of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Through and with its subsidiary, A. Lasaponara & Sons, Inc., offer to Peter Muraca immediate employment to the position for which he was discriminatorily considered on May 27, 1974, or if such position no longer exists, to a substantially equivalent position, and make him whole for any loss of pay suffered by reason of the discrimination against him in the manner described above in the section entitled "The Remedy."

(b) Through and with its subsidiary, A. Lasaponara & Sons, Inc., offer Eva Wilson, William Bonville, Robert Kraeger, Margaret Peck, Richard Hayes, and Gary Bartle immediate and full reinstatement to his or her former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to seniority or other rights previously enjoyed, and make each whole for any loss of pay suffered by reason of their unlawful discharge in the manner described above in the section entitled "The Remedy."

(c) Notify the Regional Director for Region 3, in writing, within 20 days from the date of the receipt of this Order, what steps the Respondent has taken to comply herewith.

It is recommended that the allegation of the complaint of violative conduct, not found herein, be dismissed.

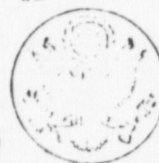
Dated at Washington, D.C., November 22, 1974

Jerry B. Stone
Administrative Law Judge

FORM NLRB-4727
(9-63)

NOTICE TO EMPLOYEES

JD-724-74



POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT threaten our employees with reprisals to dissuade them from supporting the Union.

WE WILL NOT refuse to bargain collectively with the Union as the exclusive bargaining representative of the employees in the bargaining unit herein found to be approved.

WE WILL NOT refuse to hire, will not discharge, or otherwise discriminate against employees in regard to hire or tenure of employment, in order to encourage or discourage membership in a labor organization or to interfere with, restrain, or coerce employees in the exercise of Section 7 rights, except to the extent that such rights may be affected by lawful agreements in accord with Section 8(a)(3) of the Act.

WE WILL NOT in any other manner interfere with, restrain or coerce the employees of A. LASAPONARA & SONS, INC., a wholly owned subsidiary of ERE INDUSTRIES, INC., in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by lawful agreements in accord with Section 8(a)(3) of the Act.

WE WILL, upon request, bargain with MECHANICS EDUCATIONAL SOCIETY OF AMERICA, AFL-CIO, as the exclusive collective bargaining representative of our employees in the unit herein found appropriate and embody any understanding reached in a signed agreement.

The appropriate bargaining unit is "All production and maintenance employees, employed by A. LASAPONARA & SONS, INC., a wholly owned subsidiary of ERE INDUSTRIES, INC., at its Base Road, Oriskany, New York, location; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act."

WE WILL if requested by the Union, rescind the unilateral changes, made around May, 1974, and thereafter, in benefits of employment of the employees in the appropriate bargaining unit, set forth above, provided, however, absent such request by the Union, there is no requirement for a rescinding of such changes in benefits.

WE WILL offer to Peter Muraca immediate employment to the position for which he was discriminatorily considered on May 27, 1974, or if such position no longer exists, to a substantially equivalent position, and *make him whole* for any loss of pay suffered by reason of the discrimination against him.

WE WILL offer to Eva Wilson, William Bonville, Robert Krauger, Margaret Peck, Richard Hayes, and Gary Bartle immediate and full reinstatement to his or her former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights previously enjoyed, and make each whole for any loss of pay suffered by reason of their unlawful discharge.

All of our employees are free to become or remain, or refrain from becoming or remaining, members of any labor organization except to the extent that such rights may be affected by lawful agreements in accord with Section 8,a)(3) of the Act.

A. LASAPONARA & SONS, INC., A
WHOLLY OWNED SUBSIDIARY OF ERE
INDUSTRIES, INC.

Dated

By

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 9th Floor, Federal Building 111 - W. Huron Street Buffalo, New York 10007, (Tel. No. 716 - 842-3100).

* * * * *

DECISION AND ORDER

On November 22, 1974, Administrative Law Judge Jerry B. Stone issued the attached Decision in this proceeding. Thereafter, Respondents filed exceptions and a supporting brief, and General Counsel filed an answering brief.¹

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,² and conclusions³ of the Administrative Law Judge and to adopt his recommended Order,⁴ as modified.

¹ We note that on February 3, 1975, the General Counsel filed as part of its answering brief to Respondents' exceptions his motion to correct transcript which earlier had been filed with the Administrative Law Judge. In this regard we note that on October 29, 1974, the Administrative Law Judge granted the General Counsel's motion to correct the transcript and we hereby affirm the Administrative Law Judge's ruling in this respect.

² The Administrative Law Judge found, *inter alia*, that Sec. 8(a) (1) of the Act was violated by the actions of Production Manager Fazzino, on April 5, 1974, in crumpling a petition protesting the scheduling of work and in informing employee Wilson that she was a troublemaker after she presented the petition to him. While we agree that the singling out of Wilson and calling her a troublemaker violates Sec. 8(a) (1), we do not find that Fazzino's crumpling of the petition, in the circumstances herein, additionally violates Sec. 8(a) (1). In this regard, the record reveals that on April 6 Fazzino spoke with Union Business Agent DeBella, and explained to DeBella his reasons for wanting the employees to work the scheduled day, Palm Sunday. He informed DeBella that the employees should have given advance notice that they wanted the day off. Thus, we do not find, as did the Administrative Law Judge, that Fazzino's conduct reveals a rejection of the principles of collective bargaining.

³ In the absence of exceptions thereto, we adopt *pro forma*, the Administrative Law Judge's dismissal of the allegation that the discharge effectuated on June 7, 1974, violated Sec. 8(a)(3) of the Act.

⁴ The recommended Order of the Administrative Law Judge omits the requirement that Respondents cease and desist from making unilateral changes in existing benefits and other terms and conditions of employment for unit employees. We shall correct this omission.

In addition, since it has been found that on or about April 23, 1974, ERE Industries, Inc., purchased A. Lasaponara & Sons, Inc., and Lasaponara became a wholly owned subsidiary of ERE, we perceive no necessity for separate Orders as fashioned by the Administrative Law Judge. Accordingly, we shall so modify the Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified, and hereby orders that Respondents A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc., Oriskany, New York, and/or ERE Industries, Inc., Medford, Massachusetts, their officers, agents, successors, and assigns, shall take the action set forth in said recommended Order as modified below:

1. Delete Part B.

2. Substitute the following for the introductory paragraph:

"Respondents, A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc., and/or ERE Industries, Inc., their officers, agents, successors, and assigns, shall:"

3. Insert the following as paragraph 1(e) and reletter former paragraph 1(e) as 1(f):

" (e) Unilaterally changing existing benefits and other terms and conditions of employment of employees in the appropriate bargaining unit found herein."

4. Substitute the attached notice for that of the Administrative Law Judge.

Dated, Washington, D.C. June 30, 1975

John H. Fanning Member

Howard Jenkins, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

CHAIRMAN MURPHY, dissenting in part:

I differ with the decision of my colleagues in only one respect. I would base no violation findings on any part of the evidence depicting the reactions of Production Manager Fazzino on April 5, 1974, when Wilson, who had identified herself as the chairman of the employee committee sponsoring the work sched-

uling protest, presented the employees' petition to him. It seems to me that the same considerations which militate against finding anything unlawful in Fazzino's crumpling of the petition also militate against finding anything unlawful in the remark which accompanied that action. In any event, I am unable to read in Fazzino's comment to Wilson that she was "a troublemaker" a threat of reprisal to her.

In all other respects, I concur in the decision of my colleagues.

Dated, Washington, D.C., June 30, 1975.

Betty Southard Murphy, Chairman

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT threaten our employees with reprisals to dissuade them from supporting the Union.

WE WILL NOT coercively interrogate our employees concerning their union membership, activities, or desires.

WE WILL NOT unilaterally change existing benefits and other terms and conditions of employment of employees in the appropriate bargaining unit found herein.

WE WILL NOT refuse to bargain collectively with the Union as the exclusive collective-bargaining representative of the employees in the bargaining unit herein found to be approved.

WE WILL NOT refuse to hire, will not discharge, or otherwise discriminate against employees in regard to hire or tenure of employment, in order to encourage or discourage membership in a labor organization or to interfere with, restrain, or coerce employees in the exercise of Section 7 rights, except

to the extent that such rights may be affected by lawful agreements in accord with Section 8(a) (3) of the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce the employees of A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc., in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by lawful agreements in accord with Section 8(a) (3) of the Act.

WE WILL, upon request, bargain with Mechanics Educational Society of America, AFL-CIO, as the exclusive collective-bargaining representative of our employees in the unit herein found appropriate and embody any understanding reached in a signed agreement. The appropriate bargaining is:

All production and maintenance employees, employed by A. Lasaponara & Sons, Inc., a wholly owned subsidiary of ERE Industries, Inc., at its Base Road, Oriskany, New York, location; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL, if required by the Union, rescind the unilateral changes, made around May 1974, and thereafter, in benefits of employment of the employees in the appropriate bargaining unit, set forth above, provided, however, absent such request by the Union, there is no requirement for a rescinding of such changes in benefits.

WE WILL offer to Peter Muraca immediate employment to the position for which he was discriminatorily considered in May 27, 1974, or, if such position no longer exists, to a substantially equivalent position, and make him whole for any loss of pay suffered by reason of the discrimination against him.

WE WILL offer to Eva Wilson, William Bonville, Robert Kraeger, Margaret Peck, Richard Hayes, and Gary Bartle immediate and full reinstatement to his or her former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his or her seniority or other rights previously enjoyed, and make each whole for any loss of pay suffered by reason of his or her unlawful discharge.

All of our employees are free to become or remain, or refrain from becoming or remaining, members of any labor organization except to the extent that such rights may be affected by lawful agreements in accord with Section 8(a) (3) of the Act.

A. LASAPONARA & SONS, INC.,
A WHOLLY OWNED SUBSIDIARY OF
ERE INDUSTRIES, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 901 Federal Building, 111 West Huron Street, Buffalo, New York 14202, Telephone 716-842-3100.

1 BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region III

In the Matter of:

A. LASAPONARA & SONS, INC., A WHOLLY OWNED
SUBSIDIARY OF ERE INDUSTRIES, INC.

and

Case No. 3-CA-
5634

MECHANICS EDUCATIONAL SOCIETY OF
AMERICA, AFL-CIO

A. LASAPONARA & SONS, INC., A WHOLLY OWNED
SUBSIDIARY OF ERE INDUSTRIES, INC.

and

Case No. 3-CA-
5708

MECHANICS EDUCATIONAL SOCIETY OF
AMERICA, AFL-CIO

Justice Building,
301 North James Street
Rome, New York
Wednesday, September 11, 1974.

The above-entitled matter came on for Hearing, pursuant to Notice, at
11:00 o'clock, a.m.

BEFORE:

THE HONORABLE JUDGE JERRY B. STONE,
Administrative Law Judge.

2 APPEARANCES:

FRANCIS J. NOVAK, JR., ESQ. 111 West Huron Street, Buffalo, New York 14202, Appearing on behalf of the Counsel for the General Counsel.

ROLLAND R. BENZOW, ESQ. BENZOW, FINCK, HANDEL, BARRETT & OWENS, 1600 Liberty Bank Bldg., Buffalo, New York 14202, Appearing on behalf of the Respondent.

JAMES KOZMA and
JAMES DEBELLA,

National Representatives, MECHANICS EDUCATIONAL SOCIETY OF AMERICA, AFL-CIO, 111 East Chestnut Street, Rome, New York 13440, Appearing on behalf of the Charging Party.

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PROCEEDINGS

JUDGE STONE: The trial is in order. The case is docketed for trial today, it is A. Lasaponara & Sons, Inc., a wholly-owned subsidiary of ERE Industries, Inc. and Mechanics Educational Society of America, AFL-CIO. That is Case 3-CA-5708. I am Judge Jerry Stone, the Administrative Law Judge assigned to hear the case. I understand the parties have discussed a possibility of adjustment of the issues and have been unable to adjust the case. If at any time you want additional time, I will give you time to settle the case.

Will Counsel and other representatives please state your appearances for the record. For General Counsel?

MR. NOVAK: Francis J. Novak, 111 West Huron Street, Buffalo, New York, Region III.

JUDGE STONE: For the Charging Party?

MR. KOZMA: James Kozma, National Representative of the Mechanics Educational Society of America, AFL-CIO, offices at 111 East Chestnut Street, Rome, New York.

JUDGE STONE: And your appearance sir?

MR. DEBELLA: James DeBella, M.E.S.A., AFL-CIO, 111 East Chestnut Street, Rome, New York.

JUDGE STONE: For the Respondent?

MR. BENZOW: Roland Benzow, Attorney for the Respondent, offices, 1600 Loberty Bank Building, Buffalo, New York.

* * * * *

6 JUDGE STONE: Lets take the complaints shortly on pretrial and see what we can do. I've looked at the complaints, I'm going to first look at the one 3-CA-5634 and I will take it from your answer in the second consolidated case with respect to the allegations, one through five and -- I haven't seen the answers filed to 5634. I assume there are no issues except in the one where the Union is a labor organization through Paragraph 5.

MR. BENZOW: One through five, its only with respect to four. We allege we have no information one way or another concerning that.

JUDGE STONE: Is that -- can we have a stipulation on that?

MR. NOVAK: I believe so, they are chartered by the AFL-CIO. I have a contract of employees in this area and other areas. They admit employees to membership, these employees participate in a Union. Those are type of questions I will be asking to prove. They are a labor organization. I think you could agree to that fact.

MR. BENZOW: I think we could stipulate.

JUDGE STONE: Then there is a stipulation in effect that the Union is a labor organization within the meaning of the Act, the Charging Party?

7 MR. BENZOW: We will stipulate to that.

JUDGE STONE: Could you stipulate?

MR. NOVAK: Yes, Your Honor.

JUDGE STONE: The stipulation is received. There is no issue on that. As I understand you do have issues on the 8(1) allegations in there, I am not looking at the answer, I am assuming that is the issue on there. Is there or isn't there?

MR. BENZOW: Yes.

JUDGE STONE: Is there an issue on Paragraph 7; that is the allegations — appropriate bargaining unit?

MR. NOVAK: There is no issue there, Your Honor.

JUDGE STONE: You admit that, your answer?

MR. BENZOW: Yes, we admit 7, Your Honor.

JUDGE STONE: Is there an issue on Paragraph 8 about the majority question?

MR. NOVAK: If I could clarify that, Your Honor, with the cards as Mr. Benzow suggested.

JUDGE STONE: Off the record.

(Discussion off the record.)

JUDGE STONE: On the record. Mr. Benzow?

MR. BENZOW: The Respondents will stipulate 7 signature cards.

JUDGE STONE: Let me ask you this first before you get into the cards. Are you in agreement on the names of the employees who are in the appropriate bargaining unit on the date that involved?

8

MR. BENZOW: Yes sir.

JUDGE STONE: Propose a stipulation on that.

MR. BENZOW: Yes.

MR. NOVAK: Propose a stipulation that the majority of the employees that are the majority who designate a Union as recommended by signing authorization cards were part of the appropriate bargaining unit.

JUDGE STONE: The question was, I was asking the names. In other words, there were certain people working that composed of the bargaining unit. Do you have a list of those people that you agree to as to who was in the unit at that time.

MR. NOVAK: I don't have that your Honor. I know there were eighteen to twenty employees at that time. The Union represents a majority of those.

MR. BENZOW: We will stipulate to that eleven out of the twenty employees at that time did sign.

JUDGE STONE: You stipulate that there were twenty employees in the appropriate bargaining unit and eleven of them have signed?

MR. BENZOW: Signed a designation card -- may I see one of those, Mr. Novak; that they were all in the latter part of November, 1973, they signed.

9 MR. NOVAK: I will stipulate to that with the caviare that I believe the Union actually represented fourteen people rather than eleven, its of no moment so I don't --

JUDGE STONE: Are you going to put in another card for the language of it?

MR. NOVAK: If you want to do that.

JUDGE STONE: Why don't you mark that General Counsel's 2?

MR. NOVAK: Please mark this as General Counsel's Exhibit 2 for identification.

(Whereupon, the above-mentioned document was marked General Counsel's Exhibit 2 for identification.)

JUDGE STONE: That is one of the eleven gentlemen?

MR. NOVAK: Yes, Your Honor.

JUDGE STONE: Whose card is that?

MR. NOVAK: Its a card signed by Eva Wilson on or about November 26, 1973 and I'm going to put in a copy and its only the first, the copy, only the first name appears which is Eva Wilson's name.

* * * * *

10 MR. NOVAK: I motion to produce -- the Union sent a letter on that date to the Respondent. I have secondary evidence of that.

JUDGE STONE: Off the record.

(Discussion off the record.)

JUDGE STONE: On the record. The stipulation?

11 MR. BENZOW: We stipulate to the receipt of that letter.

MR. NOVAK: Letter dated December 3rd addressed to A. Lasaponara Sons, Inc., from James Kozma, National Representative stating they represent the majority of the -- the letter speaks for itself.

JUDGE STONE: The letter has been marked and any objections to receiving it, the letter?

MR. BENZOW: No objection.

JUDGE STONE: Its received in the record.

(Whereupon, the above-mentioned document was marked General Counsel's Exhibit 3 for identification and received in evidence.)

* * * * *

13 MR. BENZOW: We could stipulate, Your Honor. The Respondent could stipulate that at the meeting in April of 1974, Mr. Frank Oddi, who was and is the President of ERE Industries, Inc., did call a meeting of the employees of the company, Lasaponara and Sons and did announce at that meeting that

holidays and sick days and bereavement and health insurance would be changed to correspond with those benefits that ERE Industries gave to their employees. In other words ERE Industries was extended to the employees of Lasaponara, the same benefits they gave their employees.

MR. NOVAK: I have a few additional items, Your Honor. I could bring out in testimony, in addition to that, life insurance. Maybe we are talking \$5,000 life insurance policy and two week's vacation after one year.

JUDGE STONE: That is something you could agree on.

MR. BENZOW: We don't think the life insurance was changed.

JUDGE STONE: All right, do you stipulate?

MR. NOVAK: I will stipulate.

JUDGE STONE: Let me ask you one question. When you say they announced, do I take it there was a change at that time?

14 MR. BENZOW: It was announced and implemented in the following month, in May of 1974.

JUDGE STONE: I will take that as an amendment to the stipulation. Gentlemen, lets move to the complaint. It has on the two case numbers on it as I see again, you have a stipulation about the Union being a labor organization. The first issue you come up in 6 and I believe your answer said that the President of the Company — the President owned on April 23rd, is that an issue or is that a fact; that is part in an agreement on —

MR. NOVAK: I don't think its — he began to be President on April 23rd, is that it according to your evidence, Mr. Oddi?

MR. BENZOW: Not the President, two foremen.

MR. NOVAK: I have no —

MR. BENZOW: I believe our contention is — I believe that Mr. Lasaponara ceased to being the President — maybe —

JUDGE STONE: Are there any allegations that it makes any difference?

MR. NOVAK: I assume he would still be a supervisor. I assume its — he is just the manager of the place now, am I correct —

MR. BENZOW: I am sorry, I am talking to Mr. Oddi.

MR. NOVAK: After he ceased becoming President of Lasaponara, what
15 was his position, Vice-President?

MR. BENZOW: Sales Manager was his title after that time, after April
23, 1974.

MR. NOVAK: He was still a supervisor within the meaning of the Act?

MR. BENZOW: Yes.

MR. NOVAK: I will stipulate to that.

JUDGE STONE: I am taking that as a negative issue. You also indicate
that Mr. Kosh is no longer employed, is there any issue on Mr. Kosh?

MR. NOVAK: No.

MR. BENZOW: It should be spelled K-o-s-h.

JUDGE STONE: K-o-s-h is apparently the proper spelling.

MR. NOVAK: I am not objecting to that amendment — he ceased being
in April 2nd, is that it?

MR. BENZOW: We don't have that in our answer and I don't really
know — it was in April, Mr. Oddi tells me in April, 1974 that he ceased being
employed.

JUDGE STONE: Are there any allegations which makes any differences
with respect to the pleading; is he alleged to have done something after the
time he continued —

MR. BENZOW: No.

JUDGE STONE: Gentlemen, you have got 8(1) allegations, are there any
allegations in there that the parties recognize, the facts enough — there maybe
a dispute what the facts mean, not a dispute whether things occurred.

16 MR. NOVAK: I think, Your Honor, on the 8(a)(3) discharge outlined in Paragraph 8(b), I think we maybe could stipulate to facts, if I could propose a stipulation.

JUDGE STONE: You want to go off the record?

MR. NOVAK: On the record. I make a stipulation which would be on or about April 4, 1974, those employees in Paragraph 8(b) of the Complaint signed a Petition, that they as members of the Mechanics Educational Society of America had been advised that Palm Sunday, April 7th was scheduled as a day of work. I believe this was a religious holiday and in event was not changed as a scheduled day of work. They would not report to work on Palm Sunday but would report to work on Monday, April 8, 1974, that those employees named in the Complaint did not report to work on Palm Sunday since it was not rescheduled as a day off. They did report to work on Monday according to my facts that they were told prior to taking the day off, that Saturday, that their names would be sent to Boston. Apparently this is to ERE Industries and that upon reporting to work Monday, nothing was said to them about their not appearing at work Palm Sunday, nothing was said until June 7, 1974 at which time they were terminated for not reporting to work, Palm Sunday, April 7, 1974.

JUDGE STONE: Do you stipulate?

17 MR. BENZOW: We will stipulate to those facts but reserve the right to state our reasons and rationale for the action that was taken but those are the bear essential facts of the dismissal.

* * * * *

JUDGE STONE: Do you have a copy of the Petition?

MR. NOVAK: Yes, Your Honor.

JUDGE STONE: You want to put it in?

MR. BENZOW: Pursuant to notice, I have produced the original.

JUDGE STONE: Lets mark that as General Counsel's 4. This is the one for April the 4th?

MR. BENZOW: Yes, Your Honor.

MR. NOVAK: Yes, Your Honor.

MR. BENZOW: The instrument is undated.

JUDGE STONE: That is referred to Palm Sunday on April 7th for identification purposes. It is the Petition that is referred to in the stipulation.

MR. BENZOW: Yes, Your Honor.

JUDGE STONE: Mark it General Counsel's 4. Any objections?

* * * * *

19

JAMES KOZMA

* * * * *

DIRECT EXAMINATION

Q. (By Mr. Novak): Mr. Kozma, do you hold a position with the Charging Party in this case, the Mechanics Educational Society of America?

A. Yes.

Q. What is your position? A. National Representative.

Q. How long have you held that position, sir? A. Since about 1945.

Q. Mr. Kozma, what was you -- what if any contact did you have, your first contact with employees of A. Lasaponara, Inc.? A. Received some calls and met with Eva Wilson on or about the first of December of just prior to that.

20

Q. What type of conversations or callings or meetings did you have with Eva Wilson? A. There has been several calls and at the meeting with Eva Wilson, he told me that the employees there want a Union and wanted to know what to do about it and I gave her cards and asked her to take them and have the rest of the employees sign the cards and return them to me and we would go on from there.

Q. Pursuant to receiving those cards, you sent the employee a letter marked as General Counsel's Exhibit 3, is that correct sir? A. Yes, it is.

Q. I call your attention to December 4, 1973, on that date, did you have an occasion to have a Union meeting on or about that date?

A. Yes, we did. We had a meeting that I think at the Pirate Cove.

Q. What was the topic of discussion at this meeting? A. We elected a union shop committee, a union committee in the plant.

Q. What members were elected, what employees were elected to be part of a committee? A. Eva Wilson, Margaret Peck, William Bonville, Bob Kraeger, Pete Muraca.

21 MR. NOVAK: Would you mark this as General Counsel's Exhibit 5 for identification please.

(The above-referred to document was marked General Counsel's Exhibit 5 for identification.)

MR. NOVAK: Your Honor, Mr. Benzow filed a motion that I produce an original Petition, an R case Petition filed by the Charging Party at Lasaponara and I show this to Mr. Benzow, the copy.

MR. BENZOW: Thank you.

Q. (By Mr. Novak): Mr. Kozma, I show you a document marked as General Counsel's Exhibit 5. Could you identify that document? A. Its an RC Petition to the National Labor Relations Board.

Q. For the production maintenance employees? A. Yes.

Q. When did you file that sir? A. It was around the 4th of December perhaps.

* * * * *

22 JUDGE STONE: The parties have agreed that 3-RC-5913 is the date of filing, December 5, 1974 would be placed on this particular document. The document is received.

MR. NOVAK: Would you mark this as General Counsel's 6 for identification?

(The above-referred to document was marked General Counsel's Exhibit 6 for identification.)

MR. BENZOW: I have no objections, Your Honor.

23

JUDGE STONE: What is 6?

MR. NOVAK: 6 is a letter sent to Mr. Fazzino, Plant Manager, Lasaponara, notifying them of the members elected to the union shop committee at Lasaponara.

JUDGE STONE: What is the date?

MR. NOVAK: December 7, 1973 signed by James Kozma.

JUDGE STONE: Any objections?

MR. BENZOW: No objections.

JUDGE STONE: Its received.

(The above-referred to document heretofore marked General Counsel's Exhibit 6 for identification was then received in evidence.)

Q. (By Mr. Novak): Mr. Kozma, I call your attention to December 10, 1973, on this date, did you have an occasion to meet -- to have a meeting regarding A. Lasaponara with any representative or any person? A. Yes, we met with Mr. Tom Zappone who is President of the Oneida County Development Corporation.

Q. What relationship does that corporation have with A. Lasaponara?

A. At that meeting he told Mr. DeBella and I that the Oneida County Development Corporation built the plant and helped finance it and was instrumental in bringing A. Lasaponara, the operation into Oneida County.

JUDGE STONE: Thomas what?

24 THE WITNESS: Z-a-p-p-o-n-e, Thomas.

Q. (By Mr. Novak): What if anything did he have to say at the meeting? A. He said he had a call from Mr. Joseph Lasaponara who received a letter or copy of a letter that we sent to the — or heard from the Board and he said at that time that the Lasaponara Company was involved in discussions with some other outfit about merging and an election or union at this time might interrupt or could in fact jeopardize the operation of the thing and we could lose twenty people's jobs.

Q. What in any response did you have to that, Mr. Kozma? A. We told Mr. Zappone that we certainly weren't out to drive anyone out of business but we did have people who worked for Lasaponara that joined the Union and we were out to protect their interests. We thought that if we could sit down with the principals or Mr. Lasaponara, we probably could work out these problems.

Q. Did you have any other meeting with Mr. Zappone, sir? A. Yes, the next day we met with Tom Zappone again.

Q. Whe you say we, who? A. Jim DeBella and I met with Tom Zappone again and he told us that Mr. Lasaponara agreed to meet with us and met with us on the following day.

Q. Did you in fact meet Mr. Lasaponara the following day?

25 A. Yes and the next day —

Q. Where did the meeting take place? A. In Mr. Zappone's office at the Oneida County Development Corporation offices at the airport.

Q. Who was present? A. Mr. Zappone, Mr. Joe Lasaponara and Tony Fazzino and Mr. DeBella and I.

Q. What if anything was said by any of the representatives of A. Lasaponara? A. They of course reiterated.

Q. Who reiterated? A. Joe Lasaponara told us they were in some discussions about a merger and an election would disrupt production in the plant and he had no objection to the union but this wasn't the time. He had no -- he didn't have any objection no objection about the union being in there but this wasn't the time.

Q. What if anything did you have to say during the course of the meeting? A. Well, at the time I said -- what we posed the election would be no problem. We pointed out to him there are a number of ways to get recognition and if he could agree to recognition, two bits an hour and then we could formulize the contract at some other date.

Q. Where in fact the proposal is given to them?

26 A. At that time, yes. Mr. DeBella wrote down the proposals and read them off to Mr. Lasaponara who made some notes and they said they would think about them and let us know.

Q. Did you have any subsequent meetings with these parties, sir?

A. Yes, a couple days later I believe.

Q. That brings us around December 14th? A. Yes, on December 14th we again met with Mr. Lasaponara, when I say we, Mr. DeBella and I and we then discussed -- oh, at that time he said --

Q. Who was representing Lasaponara? A. Mr. Joe Lasaponara.

Q. He alone? A. Yes.

Q. Where did the meeting take place? A. At the Horizon Inn.

Q. What if anything was said by Mr. Lasaponara? A. He said that he wasn't ready to sign any contract at this time and he wanted to know if there was anything else we could do about a shorter term for our contract for recognition.

Q. Did he have any -- did he make any other demands sir? A. He said that twenty-five cents was too much, could we live with twenty cents, an increase across the board.

Q. If what -- if any response did you have to his proposals or --

27

A. We thought that we could live with the twenty cents an hour provided of course that he continued the past practice of granting increases every three months and also making the Welfare Program, Hospitalization and what-not available to employees after they have been there six months. He also wanted to know if at that time, if the twenty cents an hour would be -- if he get credited for it when he negotiated the complete contract.

Q. Was there a discussion when a complete contract would be negotiated?

A. Yes, at that meeting and prior meetings there is a time element they thought they had to have and we talked about a February date, a March 1st date and I think on that date, March 1st, we weren't quite sure whether that would be time enough to consummate their negotiation or whatever they were doing and we suggested the middle of March or lets make it April 1st. We told them we would prepare a recognition agreement and withdraw the Petition for an election with the National Labor Relations Board.

Q. Did he give any response when you told him that? A. He said

fine, then we will formulize it, we could do that at the plant and we were going to set up a date or we did set up a date for about the 20th and this is going to be formulized where Mr. Fazzino who is the Plant Manager and a brother-in-law to Mr. Lasaponara, would formulize it and we go on from there.

28

Q. Did you meet with Mr. Lasaponara or did you meet with Mr. Fazzino on December 20th, 1973? A. Yes, we did.

Q. Who was present for the Union? A. James Kozma, Eva Wilson, Pete Muraca, William Bonville and Bob Kraeger.

Q. Who was present for representing Lasaponara? A. Mr. Tony Fazzino.

Q. What if anything did Mr. Fazzino say at the meeting? A. He said the Company was having problems, it was going to take time to iron

them up and they would get their raise the day before Christmas, a twenty cent raise the day before Christmas.

MR. NOVAK: Would you mark this please as General Counsel's Number 7?

(The above-referred to document was marked General Counsel's Exhibit 7 for identification.)

Q. (By Mr. Novak): Mr. Kozma, pursuant to your December 14th meeting you attempted -- you stated that you would present Lasaponara with a formal recognition agreement? A. Yes.

Q. Pursuant to that meeting, did you in fact present Lasaponara with a formal recognition agreement? A. Yes, we did. We presented that at a December 20th meeting and after I and the committee signed it, we turned it over to Mr. Fazzino who was to send it on to Mr. --

Q. Excuse me. Hold it. I show you General Counsel's Exhibit 7 for identification. Is that the recognition agreement? A. Yes, it is.

Q. That was given to Mr. Fazzino? A. Yes, it is.

Q. Now, Your Honor, I have one copy with a signature on it. They other, the copies don't have the signatures and I ask if Mr. Benzow could find the original that was here.

JUDGE STONE: Is there any objection to this?

MR. BENZOW: I have no objection to it, Your Honor. That was submitted to the National Labor Relations Board as part of our investigatory statement and I just know where the original went to or the copy we had.

* * * * *

Q. (By Mr. Novak): Mr. Kozma, when you handed Mr. Fazzino a copy of the recognition agreement signed by you and some members of the Union shop committee, what was his response when handed to him? A. He said he would send it on to Joe for his signature.

Q. Was there any discussion at this meeting, Mr. Kozma, regarding what the Union was going to do them? A. Yes, we notified Mr. Fazzino that Eva Wilson was going to be chairlady of the committee and if there was any problems with Mr. Fazzino co-work with her and talk to her and if there was any additional problems we left Mr. DeBella's phone number so he could call him.

Q. Did you tell Mr. Fazzino what you were going to do at all with regard to your petition filed with the National Labor Relations Board? A. We told him that would be withdrawn that day.

MR. NOVAK: Would you mark this as General Counsel's 8 please.

* * * * *

31 Q. (By Mr. Novak): Mr. Kozma, I show you this document; can you describe that document? A. Its a National Labor Relations Board form that provides for the withdrawing of a Petition and or charge, the word "charge" is crossed off and request permission to withdraw the Petition.

Q. This is withdrawal of the Petition, you filed previously that was in evidence? A. Yes.

JUDGE STONE: What is the date on it?

MR. NOVAK: It was filed on December 20th, Your Honor, and I ask the Court to take administrative notice that the withdrawal request was approved by the Regional Director on December 25, 1973 and the --

JUDGE STONE: Rather then, could you stipulate to that?

MR. BENZOW: Well, I intended to introduce in evidence the copy of the National Labor Relations Board approval of withdrawal.

MR. NOVAK: I don't see what the purpose of it is.

MR. BENZOW: Its part of our case and certainly somewhat a momentous document.

MR. NOVAK: I agree, I am stipulating that we did approval the withdrawal. I'm asking Your Honor to take administrative notice that we did approve it.

32 MR. BENZOW: The best evidence is that, the one we received and we would like to put it in evidence.

JUDGE STONE: Is there any time that was approved on December 26th?

MR. BENZOW: No question.

JUDGE STONE: I will take administrative notice of it. General Counsel's 8 is received in evidence.

(The above-referred to document heretofore marked General Counsel's Exhibit 8 for identification was then received in evidence.)

Q. (By Mr. Novak): Mr. Kozma, I call your attention to March 29, of 1974 and asked you on this occasion did you have an occasion to meet with any employee of A. Lasaponara? A. Yes, Eva Wilson called and said that the Company was scheduling Palm Sunday as a day of work and she also said that the employees didn't want to work that day and wanted to know if there was anything that could be done about it and I told her, yes, there was. I told her I would prepare a Petition and have her come up and pick it up.

Q. Did she in fact pick it up, sir? A. Yes, she did and at that time I told her half of the employees signed it, present it to Mr. Fazzino and also tell him that if scheduling is a problem they would be willing or they would or someone from our office would be -- call up there and work out the scheduling so that they wouldn't lose production time, because our people would

33 be willing to work daily overtime to make up for that lost time.

Q. Mr. Kosma, I show you General Counsel's Exhibit 4. Is that the Petition you prepared and gave to Eva Wilson? A. Yes, it is.

* * * * *

CROSS EXAMINATION

* * * * *

34 Q. Now, I call your attention to the fact that on the very first line of that agreement it says effective April 1, 1973? A. Yes.

Q. Was it '73? A. Oh, I beg your pardon, it should have been '74.

35 Q. The copies that General Counsel has produced have the dates 1974 written in there? A. Yes.

Q. Were those copies prepared by your office? A. Yes, they were. Which copy are you asking about?

Q. The ones that are dated 1974, were they prepared by you?
A. Yes, prepared in my office.

Q. Was the original or the one, the photostatic copy of the original that bars your signature, was that prepared in your office? A. Yes.

Q. The one that has the date 1973 on it? A. Yes, it was in our office.

MR. NOVAK: Your Honor, if I may, I filed a notice to produce the original document. There was only two copies, two signed copies, all the copies the Union had of that document were given to Mr. Fazzino and my notice to produce. I would get secondary evidence — the secondary evidence of that was a secretary shorthand of that that was made into that document. Mr. Benzow did not have the original document that was the secondary evidence that I produced.

MR. BENZOW: I was just trying to clear up the discrepancy in date.

JUDGE STONE: Let me see the document that was in the report.

36 MR. BENZOW: This is it.

JUDGE STONE: It has '73.

MR. NOVAK: There was a mistake, '73, I know it took place in '74 when they gave it to him.

JUDGE STONE: This is the document you got from the Respondent, this is the one that had the signature on it?

MR. NOVAK: Right, the date was here. I agree with that date, no problem.

MR. BENZOW: I think, Your Honor, the copy should be conformed otherwise there is going to be a conflict of an entire year.

JUDGE STONE: What I suggested to them, I want him to photostat for the copy. You could change it.

MR. NOVAK: These are the same except for the '73 and I will change that. Its a mistake. We are dealing in the year '74.

MR. BENZOW: I just didn't want this to rise up and haunt us, Your Honor, I thought we would clear it up right now.

JUDGE STONE: Let me ask you this. Is there any question where it says April 1, 1973 that it was referring to '73 or '74?

MR. NOVAK: My evidence, I have, I think it refers to '74 obviously.

37 THE WITNESS: Yes sir, '74.

JUDGE STONE: Where it says effective April 1, 1973 you meant to say April '74?

THE WITNESS: It should have been if it wasn't.

* * * * *

38 Q. Mr. Kozma, did you make application to the — or Pete rather to the New York State Labor Department relative to representation? A. Yes, I did.

Q. Did you on or about January 14, 1974 request the New York State Labor Relations Board to withdraw your Petition? A. Yes, I did.

* * * * *

39 Q. (By Mr. Benzow): Now, on or about February the 8th, 1974 did you receive a letter from the State Board granting your request to withdraw? A. I believe we did.

Q. I show you a photostat, a letter bearing that date, the signature apparently being a Eugene Rosenzweig, addressed to Mechanics Educational Society of America, 310 East Chestnut Street, Rome, New York, and ask you if that is a copy of the letter you received? A. I believe we did. I had seen this letter at the time. I was not in the office. I saw it sometime, perhaps in March or April.

* * * * *

43 Q. I believe you testified that you were willing to go along with Mr. Lasaponara in withdrawing the Petition and sweeping this business under the rug so to speak, so as not to spoil the possible merger that was pending, is that right? A. No, I don't agree with the choice of words. There was no sweeping under the rug. My problem was I represented some people. He said the election would be disrupted. In the election you have people that are for it and against it and he wanted to go into other matters.

Q. You agreed not to rock the boat, is that right?

44 MR. NOVAK: I object to his phraseology.

JUDGE STONE: Overruled.

THE WITNESS: I agreed to his recognition.

Q. (By Mr. Benzow): Just a moment, you agreed not to be disrupted?

A. I didn't make any such agreement. I agreed to an election — was not necessary if we could get recognition and we agreed to withdraw the Petition.

Q. Did you get recognition, it unsigned? A. At the time we withdrew the Petition, we had everybody believing that Mr. Lasaponara was going to sign the recognition.

Q. The Petition was not in fact withdrawn until December the 26th?

A. I mailed it on December the 20th.

Q. Your request for the withdrawal stated no conditions, isn't that correct? A. The form does not provide for conditions, its a standard National

Labor Relations Board form that you request permission to withdraw either a charge or a Petition.

Q. After December 26, 1973, you knew of course that the recognition agreement had not been signed at that time? A. I was on vacation sir, until March the 14th or 15th.

* * * * *

47 Q. That is like motherhood, like we are all in favor of that. You testified on direct, Mr. Kozma, the question came up in your discussion with Mr. Lasaponara as to whether this was going to be deferred, whether the recognition agreement should be effective in February or in March or in April?

A. Yes.

Q. You discussed that with him? A. He mentioned — I have no way of knowing what they do, I know he didn't want to be bothered with an election. I said you don't have to be because we could resolve the recognition, that is, that was the only discussion between Mr. Lasaponara and me.

Q. You expected that a new owner of this business or somebody that had taken it over on April the 1st, 1973 was going to sign a contract with you? A. I didn't expect any such thing.

48 Q. Who did you think was going to sign the contract? A. I expected Mr. Lasaponara.

Q. After he sold the business? A. I had no way of knowing he was going to sell or going to sell.

Q. He told you, did he not, when you agreed to April 1st, he told you that it had to be April 1st because the deal was going to be consummated in March, didn't he? A. There is nothing about a deal, he said it takes time for negotiations, he doesn't know whether they will be consummated or not.

Q. That date of April 1st, was it picked out of the air, was it? A. We talked February, March, Lasaponara said it may take a couple of weeks more then we said, make it April 1st —

Q. He said it may take some time to close this deal, is that what he said? A. I don't remember what he said at that point. I don't remember whether he said deal or business or the exact terminology, of course I don't

Q. Otherwise why would you discuss a date to Mr. Kozma, if you didn't know what was involved? A. That was not my business, my sole business was getting recognition. I got recognition and we are going to sit down --

49 Q. You were quite willing to go along with the gentlemen who was going to sell his business so you wouldn't do anything to spoil the deal?

A. I did not know he was going to sell his business, I went along because he gave me recognition as of April 1st and we were going to sit down and negotiate a complete contract.

Q. They were your words on direct testimony, he said there was going to be a merger so you did not know there was? A. Also, Mr. Zappone said they had financial problems and needed additional cash, all of these things, the Industrial Development Corporation to help bring industry. I was not going to sit there and take a hardnose position and drive some jobs out of the area.

Q. Well, that is all very noble.

* * * * *

THE WITNESS: I had no deal, I discussed nothing with Mr. Lasaponara, the only discussion we're talking about was the merger. I had no way of knowing whether he was merging with x y z or they were merging with him
50 or no way of knowing whether it would be consummated and further I had no interest and I didn't care.

Q. You cared enough to extend the date to April 1st? A. So he wouldn't have the problem of an election. Have you ever gone through the problem of an election sir?

Q. Answer my question. You went along with an April 1st date?

A. Yes.

Q. Was there anything else you went along with? A. Twenty cents an hour instead of twenty-five for the employees.

Q. Was there anything else you went along with insofar as not taking any action in any interim period? A. I don't understand what you mean.

Q. The period from the time you talked with him, some time in December, until April 1st, 1974? A. We didn't agree to that. When I talked to them, we talked to them, if there was any grievances, we would handle them and set up the machinery for handling them.

Q. When did you leave on your vacation? A. I left on the 21st of December and I came back on January 1st and went back in about two or three weeks and didn't get back until the middle of March.

Q. You were back for three weeks during the middle of January?

51

A. Yes.

Q. You knew then the recognition agreement was not signed? A. Yes.

Q. Did you do anything about it? A. No, I don't believe I did. At the time I was more interested in getting on vacation.

Q. I thought you were so noble and now I wonder. A. I had recognition.

Q. Well, when you came back from your vacation in March, you found the agreement wasn't signed? A. Right.

Q. Did that distress you? A. Yes, I also found that Lasaponara & Sons had not paid some people some raises they had coming and other things.

Q. Just answer my question. Did that distress you that it was not signed? A. Yes.

Q. What did you do about that? A. Nothing at that moment.

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53 Q. Now, did you expect that a new owner was going to sign this contract? A. No, I didn't expect anything. I had no way of knowing there was a new owner. I expected to do business with Mr. Lasaponara and negotiate a contract with him on April 1st.

Q. With who? A. Mr. Lasaponara.

Q. But already knew that he was either merging or selling his business, didn't you?

* * * * *

55 Q. Right. He didn't want to be disrupted and needed time to carry on these negotiations, isn't that correct? A. He may have said that, I paid no attention to it.

Q. And having said that, you agreed to April 1st, 1974 as the effective date? A. Yes.

Q. I reiterate to you, Mr. Kozma, did you expect that a new owner, whether he -- whether it be by merger or sell out or consultation or what have you, did you expect the new owner to sign this recognition agreement with you and enter into a contract? A. I expected him to sign the agreement with Mr. Lasaponara on or about April 1st.

Q. Even though he was no longer the owner? A. I didn't know that.

* * * * *

REDIRECT EXAMINATION

Q. (By Mr. Novak): Let's go back to the December 14th, 1973 meeting at the Horizon Inn. Who was present again at that meeting? A. December 14th?

56 Q. Yes, at the Horizon Hotel? A. Joe Lasaponara and Jim DeBella and I.

Q. What happened at that meeting, what did Mr. Lasaponara say and what did you or Mr. DeBella say? A. He didn't want a long-term contract,

something shorter, two bits an hour is too much, twenty cents he could live with and get credit for it when he bargained a full contract.

Q. When he bargained a full contract? A. Yes, continue the program of automatic increases for employees who would have been there for three months, pay for hospitalization for employees after having been there for six months and we withdraw the Petition. We prepared the recognition agreement, take it to the plant and sign it.

Q. Upon knowledge and belief, Mr. Kozma, was that twenty cent an hour increase granted? A. Yes, it was.

Q. When was that granted? A. It was my understanding, I wasn't there on the time, it was granted on the Friday before Christmas.

Q. Mr. Kozma, when the first time you heard of Mr. Frank Oddi? A. Sometime in March when one of the girls, Eva, called me and said Mr. Lasaponara called a meeting and introduced the new owner who then enumerated benefits.

Q. Was that what we stipulated to earlier in the trial, that was that meeting late March, early April?

57

A. Yes.

Q. That is the first time you heard Frank Oddi? A. Yes.

Q. That was in the beginning of April? A. Yes.

Q. You filed a charge in this case to refusal to bargain - April 10th sir?

A. Yes.

MR. NOVAK: No further questions.

JUDGE STONE: Do you have any other questions?

RECROSS EXAMINATION

Q. (By Mr. Benzow): Just one question, Your Honor. In regard to that twenty cent increase at the meeting on December the 14th, did Mr. Lasaponara tell you that he had already planned the twenty cent increase? A. I don't recall any such thing, no.

Q. That is your best recollection? A. Yes sir.

* * * *

58

JAMES DEBELLO

* * * *

DIRECT EXAMINATION

Q. (By Mr. Novak): Mr. DeBella, how long have you been a National Representative with the Mechanics Educational Society of America? A. Almost thirty years.

Q. Mr. DeBella, you have heard Mr. Kozma's testimony, you have heard Mr. Kozma on the A. Lasaponara case? A. Yes, I did.

Q. Were you present on December 4th at that Union meeting when the union shop committee was elected sir? A. Yes, I was.

Q. Were you present at that meeting with Mr. Zappone at the Oneida County Industrial Corporation. A. Yes.

Q. What was said?

59

A. Mr. Zappone at that meeting informed us that the Oneida County Development Corporation built the plant and put money in and got it started and so forth. He was wondering if there was something that could be done because of the apprehension of a pending election might have. The company had some internal problems. He said if there was anything we could do we told them we weren't interested in disrupting anything. We were out to organize workers, this was our job and thought there was a possibility of working things out, if we could sit down and talk with Mr. Lasaponara we would be happy to do so.

Q. Were you present Mr. DeBella, at that December 11th meeting with Mr. Zappone? A. Yes, I was.

Q. What was discussed at that meeting? A. Mr. Zappone informed me because he had talked to Mr. Lasaponara and Mr. Lasaponara was willing to meet with us on the following day.

Q. Did you in fact meet with Mr. Lasaponara the following day?

A. Yes.

Q. Were you present there? A. Yes.

Q. Who else was present for the Union? A. Mr. Kozma.

60 Q. Who was present for the Employer? A. Mr. Lasaponara and Mr. Fazzino.

Q. What if anything was discussed at this meeting sir? A. Mr. Lasaponara informed us that the company had some internal problem but there was some negotiations going on about a merger.

Q. Excuse me, did he give you any date when this merger would take place, any date? A. No. He said negotiations were underway. He was concerned about the effects of an election and we could understand that because we had been through many elections and they are disruptive and in terms of production and any other way, I suppose until the thing is settled, so we informed Mr. Lasaponara at that meeting, our responsibility is to organize workers while we could be sympathetic, we have a primary responsibility that we have to discharge and that was the organization of the workers, looking after their interests.

* * * * *

62 MR. NOVAK: Your Honor, I believe those notes were taken in the regular course by Mr. DeBella, in the regular course of that meeting and is a proper exhibit. Mr. DeBella, I call your attention to December 14th, 1973. Do you have an occasion to have a meeting with the Employer on this date?

THE WITNESS: Yes, I did.

Q. (By Mr. Novak): Where did this meeting take place? A. At the Horizon Inn.

63 Q. Who was present for the Union? A. Mr. Kozma and myself.

Q. For the Employer? A. Mr. Lasaponara.

Q. What if anything was said by Mr. Lasaponara? A. Well, we discussed the proposals that we had made at the previous meetings and Mr. Lasaponara said — felt that twenty-five cents an hour was too much, requested twenty cents an hour rather than twenty-five, so we told him that would be perfectly okay providing he continued the automatic increase program that they had and continued the insurance coverage for the employees that have been in effect and provided that he would accord the union recognition and on that basis we could consummate a full agreement about April 1st. We discussed several dates and as Mr. Kozma's testimony indicated.

Q. You tell us what the discussion of several dates were? A. We talked about a March date, March 1st and then Mr. Lasaponara indicated perhaps that March 15th, about the middle of March would be better and we said to him, if its going to be that tight, I said why don't you take until April 1st.

Q. Did he give you a reason why it would be that tight? A. He had his reasons but not in any detail. He had internal problems.

64 Q. That is all he told you? A. Yes.

Q. Did he mention ERE Industries, at this meeting? A. No.

Q. Did he mention Frank Oddi at this meeting? A. No.

Q. What else was discussed at this meeting sir? A. We reached an agreement on those points, the twenty cents an hour across the board, continuance of the automatic raises, the continuance of the insurance, recognition for the Union, the consummation on April 1st, we recommended an agreement on those points and the question of formulizing the agreement, the recognition part of it reduced that to writing so it was arranged that we would meet with Mr. Fazzino.

Q. Who arranged it? A. Mr. Lasaponara.

Q. What did he tell you to do? A. To write up the agreement and get it to Mr. Fazzino and he in turn would turn it over to Mr. Lasaponara for his signature.

Q. Mr. Lasaponara told you this? A. Yes, that's right.

Q. Did you agree on a date? A. I don't recall but we did meet on December 20th, this I remember.

65 Q. Where did this meeting take place? A. At the plant.

Q. Who was present for the Union? A. The Union committee, Mr. Kozma and myself and Mr. Fazzino for the Company.

Q. What happened, what transpired during the course of this meeting?

A. Mr. Fazzino opened the meeting and he made some comment about the Company having internal problems that would require a little time to straighten them out.

Q. Is that all he said? A. Just internal problems. He said they were putting a twenty cent an hour increase in effect right away. As a result of the discussion between Mr. Lasaponara and the Union and --

Q. Did you hand the recognition over to him? A. Yes, he prepared the recognition agreement, the committee signed it and Mr. Kozma signed it in Mr. Fazzino's presence and two copies were turned over to Mr. Fazzino, he put them in his desk drawer and said he would turn them over to Mr. Lasaponara for his signature.

Q. Now, did you stay on the ship when this fellow went on vacation?

A. Yes, I did.

Q. Did you stay right with this case?

66 A. Yes, I did.

Q. You didn't abandon any employees of A. Lasaponara then? A. No way, constant touch.

Q. I call your attention to January 4th, on this day, did you have an occasion to have a conversation with anybody from supervision, from Lasaponara's? A. It was right after the holidays when I made my first of telephone calls. It was to Mr. Fazzino.

Q. Did you call him at the plant? A. Yes, we hadn't received a copy of the recognition agreement as agreed.

Q. What did you say to him? A. I told him I didn't get the copy yet and Mr. Fazzino said the holidays, there is a delay and then he wasn't able to get them to Joe but he would get them out and we would be hearing from him.

Q. I call your attention to February 4, 1973. On this date, did you convene a Union meeting? A. Yes.

Q. What type of meeting was this? A. A membership meeting of the employees.

Q. What was discussed at this meeting? A. Some employee problems.

Q. What type of problems? A. It seems that -- as I recall, some of the employees hadn't received the health insurance coverage, some of the employees hadn't received their automatic increases.

67

Q. Some hadn't but some had? A. Evidently some had and some hadn't and I think there was one employee that didn't get the twenty cent an hour raise.

Q. I call your attention to February 5th on this date, did you have an occasion to talk to anybody from management? A. I called Mr. Fazzino.

Q. What did you talk to him about? A. I talked to him about the -- discussed the employee's problem, we discussed at the membership meeting.

Q. Anything else discussed? A. And also the fact that I hadn't received the copy of the recognition agreement yet.

Q. What did he tell you to do? A. He said he didn't know but Joe was busy and this sort of thing.

Q. I call your attention to February 6th, on this date, did you have an occasion to have a conversation with anybody from management or anybody

connected with Lasaponara? A. I think about that time I started to get a little bit disturbed. I think I called Mr.

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69 Q. (By Mr. Novak): Go ahead sir. A. I informed Mr. Zappone that we hadn't received a copy of the agreement. I felt Mr. Lasaponara was not acting in good faith and I believe —

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70 MR. NOVAK: Did he arrange a meeting for you?

THE WITNESS: I requested that he arrange a meeting. He said he would attempt to arrange a meeting.

Q. (By Mr. Novak): Did he if in fact arrange a meeting for you?

A. As I recall, he wasn't able to at that time, to arrange a meeting.

MR. BENZOW: Well, the question is did he or did not arrange a meeting, not whether he was able.

JUDGE STONE: Well, I will take it if he is not able to that he didn't arrange the meeting.

MR. BENZOW: All right, Your Honor, I will withdraw.

JUDGE STONE: Go ahead. Next question.

Q. (By Mr. Novak): I call your attention to February 28, 1974, on this date did you have an occasion to have any conversation with the employees from Lasaponara? A. Yes.

Q. Who did you have a conversation with?

71 A. I talked with Eva Wilson, Margaret Peck and Pat Wilson, I believe.

Q. What did they tell you if anything? A. They came to the Union Office and informed me that they had been terminated, layed off. I think they said because they were going to be replaced with a woman — with men.

Q. Pursuant to that conversation you had with them, did you have any conversations with anybody from management? A. Yes, I did.

71 Q. Who did you have a conversation with? A. I called Mr. Fazzino.

Q. Was it that day? A. That day or the next day.

Q. What type of conversation did you have with him? A. I informed Mr. Fazzino that termination of these girls – I reminded him first of all that these – two of these girls were members of the Union committee and that their termination, we couldn't put up with it if we were going to get along and also if they were being terminated because he wanted to replace them with men, this is in violation of law and I suggested to him you had better reconsider the action and bring the girls back to work immediately.

72 Q. Do you know – did he reconsider his actions and bring them back to work? A. Mr. Fazzino said he would discuss the matter with Mr. Lasaponara.

Q. Did he get back to you? A. Yes, got back to me, I believe the original discussion was on a Thursday and got back to me on the same Saturday. He called me and informed me that he discussed the matter with Mr. Lasaponara and the girls are to report to work, for work Monday morning.

JUDGE STONE: When was this?

MR. NOVAK; March 2nd. I call your attention to March 5th sir, on this date did you have a conversation with anybody in management from Lasaponara's?

THE WITNESS: On March 5th there were some conversations. On March 5th I talked with Mr. Lasaponara, I think.

Q. (By Mr. Novak) Did he call you or did you call him? A. I called Mr. Lasaponara.

Q. What if any kind of conversation did you have with him? A. I called Mr. Lasaponara with regard to some of the employee problems dealing with insurances, dealing with automatic increases, I think there was another problem where one of the employees felt he was not getting proper rate for

the job he was doing, I think that was another problem.

Q. Is that all that you asked him? A. I believe at that time I also asked him --

73 Q. Discussed grievances? A. Yes, discussed grievances.

Q. What was his response to this? A. Oh, yes, he said that he suggested that they be put in writing.

Q. And send it to him? A. Yes, but put in writing and turn over to Mr. Fazzino who in turn would get them to him. So I told him I was perfectly willing to do that.

Q. Did you meet with Mr. Fazzino? A. Yes, Eva Wilson and I met with Mr. Fazzino at the plant and at that time I turned the written grievances over to --

Q. Was there any other discussions? A. Mr. Fazzino.

Q. Was there anything else discussed at that meeting when you turned over the grievances? A. Yes, we turned the letter over to Mr. Fazzino and he said he would send it on to Mr. Lasaponara.

MR. NOVAK: Would you mark this as General Counsel's 10 please?

(The above-referred to document was marked General Counsel's Exhibit 10 for identification.)

* * * * *

74 Q. (By Mr. Novak) I show you General Counsel's 10, is that the same letter you gave Mr. Fazzino on or about the date it bears? A. It is.

Q. I call your attention to March 25, 1974, on that date did you have an occasion to have a conversation with anybody from management, March 25th? A. March 25th?

Q. On or about that time? A. On or about that time, I believe I talked to Mr. Fazzino.

Q. After you gave that letter to Mr. Fazzino, did you follow this up at all with Mr. Lasaponara? A. Yes.

75 Q. What did you do in that regard? A. I tried to reach Mr. Lasaponara as I recall to get an answer on the grievance and I don't believe I was able to reach Mr. Lasaponara at that time.

Q. You have heard some testimony and also we made some distinction that Mr. Oddi is now the President of Lasaponara which is a wholly owned subsidiary. When was the first time that you became aware that Mr. Oddi was the new President? A. I learned that late in March.

Q. Where did you hear it from? A. From Mr. Zappone, a telephone call that I had made to Mr. Zappone once more attempting to get a meeting with — discussions with Mr. Zappone. He told me that he mentioned Mr. Oddi and this I believe was the first time I heard his name. Mr. Oddi and ERE Industries and at that time Mr. Zappone, I had informed Mr. Zappone that things weren't working out in good faith, that we had kept our commitment to the company, the company had not kept its commitment to us, I'm complaining to Mr. Zappone —

MR. BENZOW: Are you speaking sir of a conversation with Mr. Zappone?

THE WITNESS: I am talking about my conversation with Mr. Zappone.

MR. BENZOW: I object to this, there is no member of the Respondent present, no member of Lasaponara present or ERE Industries?

76 THE WITNESS: No, this is a telephone conversation with Mr. Zappone.

MR. BENZOW: I object to all that testimony and request that it be stricken.

MR. NOVAK: I will strike it.

THE WITNESS: That is the first time I heard Mr. Oddi's name.

Q. (By Mr. Novak) Did you ever try to contact Mr. Oddi after Mr. Zappone told you Mr. Oddi was the man? A. He gave Mr. Oddi's number in Boston.

Q. Did you call Mr. Oddi? A. Yes, I telephoned Mr. Oddi.

Q. When did you call him? A. About 4:00 o'clock in the afternoon.

Q. What date? A. That was April 1st, early March or April 1st, on or about that time. I wasn't able to reach Mr. Oddi.

Q. Did you call his office? A. Yes, I called the phone number that Mr. Zappone gave me.

Q. When they answered the phone, what did they say? A. A girl answered the phone and I asked for Mr. Oddi and she said Mr. Oddi wasn't there at the time, he was expected by 5:00 o'clock and she would give him the message.

77 Q. Did you leave your telephone number and name? A. Yes.

Q. Did he ever call you back? A. No, he didn't.

Q. You filed a charge -- a charge was filed on April 10th, is that it?
A. I think that was it.

Q. The record will show that. I call your attention to April 6th, on this date you had a conversation with anybody from management, April 6th?

A. April 6th, I talked with Mr. Fazzino.

Q. What was that about sir? A. That was in connection with some employee problems. I can't say specifically.

Q. Was the Petition Palm Sunday Petition was filed on April 4th, is that correct? A. That is correct. That brings it to memory, when I called Mr. Fazzino on April 6th it was with regards to --

Q. That would be the Saturday? A. That's right, that was with regards to the Petition that the employees had submitted regarding Palm Sunday.

Q. Why would you call him? A. My reason for calling Mr. Fazzino was he had accused Eva Wilson --

MR. BENZOW: Just a moment, were you present when the accusation was made?

78 THE WITNESS: No, I was informed of this.

Q. (By Mr. Novak) What did you say to him? A. I said to Mr. Faz-
zino that the employees had a perfect right to file a protest petition regarding
Palm Sunday. They had the perfect right to file such a petition and that Eva
Wilson was chairlady of the union committee, a perfect right to submit.

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80 CROSS EXAMINATION

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81 Q. Despite that withdrawal you continued and went ahead and had all
these conversations been labor terms and conditions and you continued to pur-
sue the course of dealing as if you were a bargaining agent for these employees,
is that correct? A. This is true. All of this pursuant to an agreement with
the Employer. We are simply doing what we had agreed to.

Q. Pursuant to an agreement that had not been executed by the Employ-
er, isn't that right? A. It had not been signed.

Q. Yes? A. That's right, it had not been signed but been agreed.

Q. You say it was agreed orally, is that it? A. Orally, that is it.

Q. But it had not been signed? A. That's right, part of the agree-
ment was that it will be signed.

* * * * *

82 Q. So that is a fair statement, is it not, up to April the 1st, 1974 there
was to be no recognition? A. That is not a fair statement, that is not the
truth.

Q. Isn't that what Exhibit 7 says? A. I know what that says. Exhi-
bit 7 says we will be recognized.

Q. Will be in the future? A. That's right, that's right.

Q. It doesn't say unrecognized, does it? A. Yes, it does not. That
doesn't say it but Mr. Lasaponara said it.

Q. This says you will be recognized? A. Mr. Lasaponara said in the meantime he agreed verbally that in the meantime we would conduct a collective bargaining relation.

Q. That document doesn't say it? A. That document doesn't say that, Mr. Lasaponara said that.

* * * * *

84 Q. (By Mr. Benzow) Its a semantic difference. In any case in late March you knew there was a new captain of the ship, did you, a new owner? A. Well, I didn't know about new owner, I heard that a merger had been consummated.

Q. Who did you expect was going to sign that recognition agreement that had not as yet been signed? A. The man that we reached an agreement with, Mr. Lasaponara.

Q. How could you if he was out, what authority would he have? A. I had no way of knowing he would be out. The merger doesn't necessarily mean that the present principals are out. The principals can continue as evidenced here.

Q. Did Mr. Zappone give you Mr. Oddi's telephone number and tell you here's the new boss, you have to talk to him? A. That is not what he said.

Q. He didn't? A. No, he said I will give you Mr. Oddi's number, I said to him -

85 Q. Why would he give you the number? A. I said to him, I understand the merger has been consummated and I was disturbed that how things worked out and wanted him to intervene because he intervened on Mr. Lasaponara's behalf and I felt that he was duty bound and had an obligation to intervene once more when things didn't work out according to the way it had been planned, so he said I will give you Mr. Oddi's telephone number and you could talk to him, that is how that came about.

Q. Okay, so that on that occasion right there on the end, something like the 25th of March, you knew there was a merger, right? A. Yes.

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86

REDIRECT EXAMINATION

Q. (By Mr. Novak) One question, Your Honor. Mr. DeBella you negotiated numerous contracts in the area? A. Yes.

Q. In every contract, how many contracts do you have in here where the corporate president signed the contract? A. The corporate president?

Q. Yes. A. I don't have one, I don't think.

Q. You have negotiated more contracts, where you recognized employees, you put it in the contract and do it later? A. This is true, the date was effectuated.

Q. The date was signed? A. Yes.

Q. Even though you may have been a certified representative ten months prior to that? A. That is true.

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87

EVA WILSON

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DIRECT EXAMINATION

Q. (By Mr. Novak) Miss Wilson, when were you employed, have you ever been employed at Lasaponara? A. Yes.

Q. From what period of time were you employed? A. From July 10th of '73 to June of '74.

Q. What position were you employed? A. I used to wrap and pack cheese.

Q. Who is your immediate supervisor? A. Tony Fazzino.

Q. You heard testimony, Miss Wilson that we stipulated that the Union Cards were then introduced this morning? A. Yes.

88

Q. Did you pass some of those union cards to the employees at work?

A. Yes.

Q. Do you recall when you passed them out? A. Oh, in November, sometime latter part of November.

Q. Do you recall who the employees were? A. Yes, I gave them to Margaret Peck, Pat Wilson, John Tartaglia, Linda Smith, Karen Marcelletta and Barbara LaFaglia.

Q. Any more employees? A. Well that day, those were the only ones. I gave them to them, I gave on to Pete Muraca and Tim Daveio.

Q. Any other employees, could you think of at this time? A. Not at this time.

Q. When you gave them the cards -- strike that. Mrs. Wilson, I call your attention to sometime on or about mid -- excuse me, you were elected to the union committee at Lasaponara's? A. Yes.

Q. I call your attention to sometime in mid-December of '73, on this date, did you have an occasion to have a conversation with anybody from management? A. Yes, we had a meeting with Tony Fazzino and the committee, Mr. Kozma and Mr. DeBella.

89

Q. Outside of that meeting, did you have any conversations with management other than that meeting in mid-December '73? A. I don't think so.

Q. Were you at any time called in the front office by anyone of the management in December of '73? A. When we had -- I had my meeting with Jim DeBella but I don't believe it was in December.

Q. Outside of your meeting with Jim DeBella? A. I am mixed up.

Q. Outside of your meeting with DeBella? A. We talked to Joe Lasaponara. I was thinking it was November, I am sorry.

Q. This occurred sometime is mid December? A. Yes.

Q. This discussion was with Mr. Lasaponara? A. Yes.

Q. How did that occur? A. Well, he came to the plant and he took all the employees two by two to talk to us and I went in with Marge Peck.

Q. Where did you go? A. In the front office.

Q. Approximately what time was this? A. About 10:00, 10:30 in the morning.

Q. You and Marge Peck were called in his office? A. Yes.

90 Q. What happened when you arrived at his office? A. He just talked to us and he said how he was surprised to see my name on the committee and that if we had a union, we wouldn't be a family, we would be more like numbers and we were saying something about the insurance and raises but he said he couldn't give us as long as we were negotiating with the union.

Q. Did you have any reply, did he ask anything from you; did you say anything at that meeting? A. No, just when I asked him why we couldn't have our — when our raises came up, why we couldn't have them, that is what he told us.

Q. I am going to direct your attention to December 20th meeting, where did that take place? A. In the front office.

Q. Who was there? A. Tony Fazzino, Jim DeBella and Jim Kozma and Pete Muraca, Bob Kraeger and Bill Bonville and myself.

Q. Could you tell us what transpired at that meeting? A. Yes, Jim gave Tony, I guess it was an agreement about twenty cents across the board we were getting a raise and at that any raises that we had coming up, we were going to get them and insurance after six months, we were supposed to get and we signed the papers, the committee signed the papers and Jim gave them to Tony Fazzino to give to Joe Lasaponara.

91 Q. I show you General Counsel's Number 7, is that the document you signed? A. Yes.

Q. Which was ultimately given to Mr. Fazzino? A. Yes.

Q. Who said that this document was supposed to be transferred to Mr. Lasaponara? A. Jim Kozma.

Q. Did you in fact get a twenty cent increase? A. Yes, we did, the following week we had it in our pay.

Q. I call your attention to January 11, 1974, on this date did you have an occasion to engage in any conversation with anybody from management?

A. Yes.

Q. Who was the conversation with? A. Marge Peck and I approached Tony Fazzino about our six month raise.

Q. Where did the conversation take place? A. In his office.

Q. This is at the plant? A. Yes.

Q. What did you say? A. I asked Tony if we were going to get our raise, the six months were up and he said we got our raise and I asked him if he meant the raise through the union, he said yes and I said that didn't have anything to do with the automatic raises and he said if I have to give you girls \$2.35 an hour, I will get rid of you and hire men so I just dropped it.

Q. I call your attention to February 28th, could you tell us what transpired on this day? A. Yes, Pat Wilson and Marge Peck and I got layed off.

Q. Were you told how long you were going to be layed off? A. No, he just said it would be a while.

JUDGE STONE: What date was that?

THE WITNESS: On March -- February 28th.

Q. (By Mr. Novak) How long in fact were you layed off? A. Well, the plant was closed the next day because they were fixing the floors and we went

JUDGE STONE: Excuse me. Do you have an allegation on this?

MR. NOVAK: No, Your Honor, I don't have an allegation that this con-

stitutes 8(a)(3), I am just trying to show my oral course of conduct that the union adjusted they were layed off.

THE WITNESS: That Thursday, we went to Marge Peck and Marge Wilson and I went to union hall and talked to Jim DeBella and he contacted Tony and I guess he had to contact Joe Lasaponara and that Saturday night, Jim DeBella called me and told me to contact the girls and tell them we were supposed to report to work Monday morning.

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Q. (By Mr. Novak) Did you in fact report to work? A. Yes.

Q. I call your attention to March 8, 1974. Were you present during the meeting with Mr. Fazzino and also Mr. DeBella? A. Yes.

Q. Tell us what transpired at this meeting and what was said? A. Mr. DeBella gave Tony a paper or letter, whatever it was on it was a few grievances that we had, that we didn't get our raises and one person didn't get the twenty cent raise and one employee wasn't getting the money that the others got for the job he did and some didn't get their insurance.

Q. I show you General Counsel's Exhibit 10, is that the letter that was given to Mr. Fazzino? A. Yes.

Q. What if anything did Mr. Fazzino say during the course of this meeting? A. He said he had to talk to Joe Lasaponara about it and he said he'd give him the letter.

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Q. (By Mr. Novak) Miss Wilson, were you present at a meeting either in late March or early April being chaired by Mr. Oddi? A. Yes.

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Q. Could you tell us something about that meeting, was Mr. Oddi introduced by someone? A. Yes, Tony Fazzino called all the employees in the plant to meet in the back room and Joe Lasaponara introduced us to Mr. Oddi and there was another man there, I don't remember his name.

Q. How was he introduced? A. He introduced Mr. Oddi as the new owner.

Q. What if anything did Mr. Oddi say at this meeting? A. He said how he was glad to meet us and talked a little about the plant and what companies they had. He more or less explained it and he said that he was going to explain some benefits that we would have and we would have \$5,000 life insurance, two weeks vacation after we had been there a year and three days for death in the family and five sick days and ten paid holidays and \$50,000 major medical.

Q. I call your attention to April 4, 1974, you heard a stipulation that a Petition was presented to the Employer on this date? A. Yes.

Q. Did you present that stipulation to the Employer? A. Yes.

96

Q. Who did you present it to? A. Mr. Fazzino.

Q. Did you have any conversation with him when you presented the Petition to him? A. Yes, I give him the Petition and told him those are the list of names that the union wrote a petition, we didn't want to work Palm Sunday. He got kind of mad and crumbled it up and threw it on the floor and wanted to hear it from everybody's mouth. He got us together and asked us if we would work and we said no, except Pat Wilson and he said he was going to turn our names into Boston whoever didn't work.

Q. Any remarks during this conversation directed to you? A. Yes, he said I was a trouble maker.

Q. When did he say that? A. We were going out the door to talk to, you know the employees to hear from them.

Q. You did not work Palm Sunday? A. No.

Q. Did you report to work that following Monday? A. Yes.

Q. Was anything at all said to you about — A. Nothing was said to us at all until we got fired June 7th.

97 Q. What happened on June 7th? A. June 7th we got done early,
about 1:00 o'clock in the afternoon and were ready to punch, he told us not
to punch and hang around and we hung around until 2:00 o'clock until every-
body got done, he told myself, Marge Peck, Gary Bartle, Bob Bonville and Bob
Kraeger to go in the front office, that he had to tell us something. When we
went in the front office he told us our job was terminated, that there was a call
from the big boss for not working on Palm Sunday and we had personal belongs
to take them.

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97 CROSS EXAMINATION

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98 Q. You mentioned those who signed the cards for the union as to ask
the union to represent them and asking for membership, do you know if any
of those people that signed those cards withdrew from the union? A. No.

Q. In your answer no, you don't know — A. Nobody withdrew,
they all stayed.

Q. As far as you know, nobody withdrew and you were more or less
chairlady? A. Yes.

Q. Did any of these people that signed, come up to you and say I want
my card back? A. No, no one did.

104 JUDGE STONE: I want to ask the party two questions and you don't
have to stipulate. Is there any question — do the parties know the precise date
as accurately as they can when Mr. Oddi was introduced and when he made
105 his discussion.

MR. NOVAK: I thought it was late March and apparently it was early
April according to the Respondent. It doesn't matter to me, Your Honor.

JUDGE STONE: I would like to be as precise as possible.

MR. NOVAK: I have both late March and some case earlier and —

MR. BENZOW: I am sorry, Your Honor, we don't have that here. Per-
haps I could bring it out when I —

JUDGE STONE: The Complaint alleges reference to the fact that ERE assumed the operation or took it over on April 23rd, before April 23rd or not.

MR. BENZOW: Before April 23rd.

JUDGE STONE: Let me see but had an agreement at that time, was it clear at that time that ERE was going to take it over?

MR. BENZOW: On that date, that was what we call the closing date of the transaction.

JUDGE STONE: April 23rd was when it happened but it was already decided at the time Mr. Oddi had made his?

MR. BENZOW: Yes.

MR. NOVAK: It was transferred, waited until some escrow transaction closed.

106 MR. BENZOW: There was some documentation that had to be taken care of.

JUDGE STONE: That may be clear to you gentlemen because you know that.

MR. BENZOW: I think the best way to handle this date is when I have Mr. Oddi testify because it is a little bit complicated.

JUDGE STONE: It may not make any difference.

MR. BENZOW: It was prior to April 23rd.

JUDGE STONE: On the list of which is General Counsel's 7, I believe a list of people in this Petition, let me ask the parties, there is also a list in the Complaint, one of the Complaints.

MR. NOVAK: The second Complaint.

JUDGE STONE: In Paragraph 9(b). 9(b) lists one, two, three, four, five, six employees and I would assume that those six employees are all they listed on General Counsel's 7?

MR. BENZOW: No, they are not, Your Honor. On 7 there are only four of them.

JUDGE STONE: I want to point that out.

MR. BENZOW: I could give those.

MR. NOVAK: All those employees named in Paragraph 8(b) in our Complaint are on that Petition.

MR. BENZOW: As I understand it, he is not talking about the Petition, the agreement.

107 JUDGE STONE: I am talking about the Petition.

MR. NOVAK: All those appear there.

MR. BENZOW: Yes, they all do.

JUDGE STONE: Now, there are six other names on the Petition in addition to the names, six alleged in the Complaint as I understand the stipulation is that there is no question the six are alleged in the Complaint were discharged. Now, there were six others, is it clear the six that are alleged in the Complaint did not work on Palm Sunday?

MR. BENZOW: That's correct.

JUDGE STONE: The other six are on the Petition. Is there any question whether they worked on Palm Sunday?

MR. NOVAK: They worked.

MR. BENZOW: I don't think there is any question they did work.

JUDGE STONE: I am talking -- taking this as a stipulation. I wanted to be clear.

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108

MARGARET PECK

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DIRECT EXAMINATION

Q. (By Mr. Novak): Margaret, were you ever employed by Lasaponara?

A. Yes.

Q. What period of time? A. From July 9, 1973 to June of 1974.

Q. What type of work did you do there? A. Packing cheese.

Q. Who was your immediate supervisor? A. Tony Fazzino.

Q. I call your attention to around November 26th, the end of November, did you pass out cards for the Mechanics Educational Society of America?

A. Yes.

Q. Do you recall what employees you passed them out to? A. Gary Bartle, Bill Bonville, Bob Kraeger and myself on the next day I gave Norm Bolton.

109 Q. They already signed them, dated them and returned them back to you? A. Yes, I give them to Eva Wilson.

Q. I call your attention to mid-December, '73. On this date, during this period of time, did you have an occasion to have any conversation with anyone from management from this? A. Yes, Joe Lasaponara, he came to the plant and he was taking the employees two by two into the front office and talking to them.

Q. Did you go into the front office? A. Yes, Eva Wilson and myself went into the front office and talked to Joe Lasaponara.

Q. Can you tell us what transpired? A. He said he was surprised to see that Eva was the head of the committee and he didn't see why we needed the union there and he named some of the paid holidays, he had six paid holidays a year and we would automatically get a raise after six months.

Q. Anything else occurred during the course of that meeting? A. No, not that I recall, no.

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110 Q. I call your attention to sometime around January 11th -- excuse me, I jumped ahead of dating. Go back to January 11th, on this date, did you have an occasion with another employee to have a conversation with a member of supervision? A. Eva Wilson and I went into Tony Fazzino's office.

Q. What did you go there for? A. We went to Tony to ask him about our raise after being there six months, we told him we were there six months and we asked him if he got our raise and he said you got your raise
111 and we replied to him that was a union raise not a company raise and he said if he had to pay us \$2.35 an hour he would lay us off and hire men.

Q. Were you ever layed off subsequent to that? A. Yes, on February 28th.

Q. How long were you layed off? A. One day. We went back to work the following Monday.

Q. How long did Mr. Fazzino say you were going to be layed off work?
A. He didn't say.

Q. Who told you to go back to work on that Monday? A. There was a note left on my door by Pat Wilson to return to work that Monday.

Q. Did you attend the meeting, the meeting where Mr. Oddi came in from Boston and talked to the employees? A. Yes.

Q. Do you recall when that meeting was? A. It was the last part of March. He took all the employees into the backroom and Joe Lasaponara give us an introduction to Mr. Oddi and said he was our new manager, he was the head of the concern and that Tony Fazzino would be our plant manager and he told us of the benefits we would have and that he would write a statement and send it to Tony and Tony could show us the statement.

Q. Do you remember the benefits?
112 A. Yes, life insurance, five paid holidays, six days a year, two weeks vacation after a year, service with pay, three day for deaths.

Q. Do you recall any others; you don't recall? A. No.

Q. You signed that Palm Sunday Petition, correct? A. Yes.

Q. Do you recall whether it was presented on a Thursday, April 4th or Thursday, April 5th, do you recall or Friday, April 5th? A. I think it was served on a Thursday.

Q. A Thursday, you recall? A. Yes.

Q. Were you present when it was presented? A. Yes.

Q. Can you tell us what transpired? A. Eva Wilson went to his office and handed it to Tony, Tony looked at it and he crumbled it up and threw it on the floor and then he picked it up and came out into the plant and talked to the employees and asked them which one wanted to work. In the beginning he said that Eva was a troublemaker and all our names would go into Boston.

Q. Did you work Palm Sunday? A. No.

Q. Did you report to work that Monday?

113 A. Yes.

Q. Was anything at all said to you about your not reporting to work on Palm Sunday? A. No, nothing.

Q. Was anything at all said to you thereafter? A. Not until we got terminated on June the 7th of '74 because we refused to work Palm Sunday for straight time.

Q. Who terminated you? A. Tony Fazzino and he said he got a phone call from the head office.

Q. Did he tell you what you were being terminated for? A. For refusing to work Palm Sunday.

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114 Q. Going back to the initial conversation where Mr. Lasaponara had you in two by two, you went in there with Eva? A. Yes.

Q. What month was that, December? A. 15th of December.

Q. I didn't catch that date. Now, Mr. Lasaponara asked you why you needed a union or why you felt you needed a union, he thought that the company was doing pretty well? A. Yes.

Q. Did he threaten you in any way? A. No.

Q. Was he nice and polite to you? A. He just said that he didn't feel so that we needed a union, it was a friendly family otherwise it wouldn't be if we had a union.

Q. It was a family corporation? A. Yes.

Q. Initially his father and so on? A. I don't know about his father.

Q. You didn't know about that? A. No.

115 Q. Relationship in the plant was sort of a friendly atmosphere, is that sort of the idea? A. Yes.

Q. Actually Mrs. Peck, in regard to your being layed off on February the 28th, was there some reason for that; there had been some comment about the fact they're being shut down for some kind of repair work? A. He was layed off, there was a shortage of work.

Q. There was a shortage of work? A. That Friday we was going to be off anyhow because they were going to fix the floor.

Q. They were fixing the floor? A. Yes, at the time.

Q. In point of factuality, you didn't lose any time at all, you came right back Monday on the following Monday? A. Yes, on the following Monday.

Q. When Mr. Oddi came to the plant and was introduced to everybody in late March of '74, you said he told you about his company taking over and the benefits that you were going to receive, everybody was going to receive, is that right? A. Yes, he was going to mail a statement to Tony so we could see.

Q. Did he say anything about this being the company policy with his own company with ERE Industry? A. No, he talked about different places they had and different companies they merged with.

116 Q. Did he say these benefits were the benefits that were given to the people in the other companies? A. No, not that I recall.

Q. You don't recall — I have no further questions.

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EXAMINATION

Q. (By Judge Stone): What day of the week was the Petition for, Palm Sunday, was it presented by Mrs. Wilson to Mr. Fazzino? A. It was either on a Thursday or Friday.

Q. Do you know which day it was? A. I think it was Friday because I worked the following Saturday where they didn't.

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117 MR. NOVAK: One question, Your Honor. When you were layed off February the 28th, you along with Eva Wilson went to the Union office?

THE WITNESS: Yes.

MR. NOVAK: And told what transpired, told Mr. DeBella what transpired?

THE WITNESS: Yes.

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KAREN MARCELLETTA

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DIRECT EXAMINATION

Q. (By Mr. Novak): Were you ever employed by Lasaponara?

118 A. Yes, I was.

Q. From what period of time were you employed there? A. Sometime, I think it was in the middle of October until January 11th.

Q. October of '73? A. Yes.

Q. To January 11th, 1973? A. Yes.

Q. Isn't it correct that you were layed off sometime around December 19, 1973? A. Layed off.

Q. What happened on December 19, 1973? A. We were suspended.

Q. It was two — A. Two week's suspension.

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Q. (By Mr. Novak): You were suspended for two weeks? A. Right.

Q. Sometime in December 19th of '73?

119

A. Right.

Q. You returned back two weeks later? A. I returned back January 8th.

Q. When you returned did you happen to have any conversation, you know, with a member of management regarding the status of another employee?

A. Yes, I talked to Tony about Pete Muraca.

Q. Tony Fazzino? A. Yes, and I asked him if Pete Muraca was fired and he said no that he wasn't fired, that he had layed him off and I asked him when he was going to come back to work and he said he didn't know that, he could come back to work anytime he wanted to.

MR. BENZOW: When was this conversation?

THE WITNESS: January 8th, he came back to work.

Q. (By Mr. Novak): During that same week, Karen, did you happen to have any further conversation with Mr. Fazzino? A. Yes, we talked.

Q. We, who? A. Linda Smith and I were in his office and we were just talking about the way he brought the union up and asked if we knew who signed union cards and I told him no, he said well, I know who signed the cards. I said if you know who signed the cards, why are you asking me. He said to me, Pete Muraca tried to get a union —

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121

LINDA SMITH

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DIRECT EXAMINATION

Q. (By Mr. Novak): From what period of time were you employed at Lasaponara? A. From the early part of November '73 to January 11, 1974.

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122 Q. What did Mr. Lasaponara say if anything? A. He was just talking about why we think we needed a union and he said that we thought we knew we could go to him anytime we wanted if we had problems and we didn't need a union.

Q. You have heard Marcelletta testify, were you also suspended on December 19th, 1973 for a two-week period? A. Yes.

Q. Did you also return to work on January, 1974? A. Yes.

Q. When you returned to work January 8th, 1974 did you happen to overhear a conversation between an employee and member of supervision regarding the status of another employee? A. Yes.

Q. Could you relate that conversation? A. I heard Karen ask Tony Fazzino when Pete Muraca was coming back to work and Tony told Karen he could come back whenever he wanted to and Karen asked him if he was fired and Tony told Karen, no, Pete was fired.

Q. During that week, Linda, did you happen to have a conversation -- another conversation with Mr. Fazzino?

123 A. Yes.

Q. Could you tell us who was present during that conversation?

A. Karen Marcelletta, Tony and myself.

Q. Could you tell us what that conversation was about? A. Yes, Karen and I went in the office to talk to Tony and --

Q. What did you go in there for? A. Karen and I went in there to ask why he was in such a bad mood and he told us since we wanted to treat him bad that he was going to treat us the same way, that he was going to act like a boss should act.

Q. Is that all that was said during that conversation? A. No, then he asked Karen and I who signed Union Cards and we told him we didn't know. He said its okay, he knew who signed them and asked if Karen, me and Pete Muraca started the union and we said no, and he said he knew who started it.

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125 Q. Now, at the meeting in December of '73, when you went to talk to Mr. Lasaponara, you went there with Karen? A. No.

Q. Who did you go with? A. Pat Wilson.

Q. You went there with Pat. Was Mr. Lasaponara polite to you?

A. Yes.

Q. Friendly? A. Yes.

Q. Did he threaten you in any way? A. No.

Q. Did he coerce you or twist your arm in any way? A. No.

Q. Threaten any retaliation or do you know what I mean by that, to get back or get even with you? A. No.

126 Q. Did he promise you any economic benefits? A. No.

Q. A trip to Europe, or anything? A. No.

Q. It was just a friendly conversation, he wanted to know how come you wanted a union, is that it? A. Yes.

Q. He thought he was pretty good boss, was that about the size of it?

A. It was all right.

Q. He thought he was anyway? A. Yes.

Q. He didn't say if you have any problems, come and see me?

A. Yes.

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ROBERT KRAEGER

127 * * * * *

128

DIRECT EXAMINATION

Q. (By Mr. Novak): Robert, from what period of time were you employed at Lasaponara? A. Near the end of July, 1973 until June 7th, 1974.

Q. Robert, I call your attention to the end of December, 1973. On this date or around this period of time, did you and another employee have a conversation with a member of supervision? A. Yes, we did.

Q. Whom was that conversation with? A. Joe Lasaponara.

Q. Where was that conversation? A. In the front office.

Q. Could you tell us what transpired? A. Well, Donald Culver and I were told to go in and see Joe, Joe Lasaponara asked us to sit down and make ourselves comfortable and proceeded to ask why we thought we needed a union and he thought that they were being fair with us, that he had checked around and he found they were paying fair rates, as well as any other factory or place in the area and I brought up the fact that we had to wash our own uniforms because we were going to have uniforms all the time to be sent back with our names on them. As of yet, we hadn't got them. He went on to say there was nothing he could do to stop us from getting a union if we wanted one but he went on to say that if you want me, he said "if you F me, I will F you", that is about it.

129

Q. Did you sign that Palm Sunday Petition? A. Yes.

Q. Were you present when it was turned over from Eva Wilson to Mr. Fazzino? A. No, I wasn't.

Q. Did you work Palm Sunday? A. No.

Q. Did you go to work following that Palm Sunday, Monday? A. Yes.

Q. Was there anything said to you about not working Palm Sunday?
A. No.

Q. During this time, subsequent to Palm Sunday, was anything said to you at all about not working Palm Sunday? A. Not until June 7th, until I was terminated.

Q. Who terminated you? A. Tony Fazzino.

130 Q. For what reason? A. He said he got a call from the home office and we were terminated for not working Palm Sunday. Bill Bonville said to Tony just Monday and Tony said no forever.

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WILLIAM BONVILLE

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DIRECT EXAMINATION

Q. (By Mr. Novak): From what period of time were you employed by Lasaponara? A. From June 1, 1973 to June 7, 1974.

131 Q. I call your attention to sometime in mid-December of 1973. Did you have an occasion to have a conversation with any member of management on this date? A. Yes.

Q. Who was that conversation with? A. Joe Lasaponara.

Q. Was anybody else with you? A. Yes, William Radley.

Q. Did he come into the room with you? A. Yes, he went in with me.

Q. What if anything did Mr. Lasaponara say to you? A. Well, he was talking to Bill Radley, he said you know why you're here, don't you and Bill said yes, its because of the union, isn't it and Joe said yes and we sat down and he said I tried to make it as nice and pleasant to work here as I can and that we were sort of like a family and everybody knew each other and I don't know whether he thought maybe I wasn't paying attention, he said "if you F me, I will F you."

JUDGE STONE: I am sorry, I didn't understand you.

THE WITNESS: He said "if you fuck me, I will fuck you".

Q. (By Mr. Novak): Did you sign that Palm Sunday Petition Bill?

A. Yes.

Q. Were you present when it was turned over to Eva by Mr. Fazzino?

132

A. No.

Q. Were you working Palm Sunday? A. No.

Q. Did you report to work that Monday? A. Yes.

Q. Was anything said to you about not reporting to work on Palm Sunday? A. No.

Q. Was anything said to you at all about not working on Palm Sunday?

A. No, not until June 7th.

Q. You were terminated on that day? A. Yes.

Q. By whom? A. Tony Fazzino.

Q. What did he tell you? A. He called us all in the front office and he said that he had gotten a telephone call, I am not sure of the exact words, I believe it was the big boss and he said he -- he pretended like he was reading off a clipboard -- because of us not reporting to work on Palm Sunday, we were terminated from our jobs. I said just Monday, I thought it was punishment and he said no, it was forever.

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133

GARY BARILE

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DIRECT EXAMINATION

Q. (By Mr. Novak): Gary, from what period of time were you employed at Lasaponara? A. July 9th of '73 to June 7th of '74.

Q. Who was your immediate supervisor? A. Tony Fazzino.

Q. What type of work did you do there?

134

A. I was dipping vats at the time, I later -- later on I was working there, I went to do the three pounders.

Q. Gary, I call your attention to November of '73. During this period of time did you happen to have an occasion to have a conversation with any member of supervision? A. Yes.

Q. Who was that with? A. John Kosh, Tony Fazzino's brother-in-law.

Q. Where did this conversation take place? A. By the storeroom.

Q. Was anybody else present? A. No.

Q. What if anything did Mr. Kosh state? A. He stated if there is a union coming in that it would not be permitted.

Q. Was that all that was said, Gary? A. That was all that was said by him.

Q. What did you say if anything? A. I didn't say anything.

Q. I call your attention to mid-December '73. Did you have an occasion to engage in any conversation with any member of supervision?

A. Yes.

Q. Who was that conversation with? A. Joe Lasaponara.

135 Q. Was anybody else present? A. Another employee by the name of Lindsay Wyckoff.

Q. What transpired at that meeting, what did Mr. Lasaponara state or your member say? A. He stated to us that if we would vote no on the union, that he could go ahead with giving us our benefits and all this stuff that was entitled to us and I stated to him that I will not go against what other people wanted in the plant.

Q. Did he reply to that at all? A. I can't remember if he stated anything else.

Q. I call your attention to March 1st of 1974. On this date, on or about this period you had happen to have a conversation with any member of supervision on that date regarding the union? A. Yes, with Tony Fazzino.

Q. Where did this conversation take place? A. In the office.

Q. In his office? A. Yes.

Q. Can you tell us what transpired in that course of this meeting?

A. It was over the time cards, we had pulled on Friday and we came into work Saturday, we had to sign new cards so I called Eva Wilson.

Q. I am talking about March 1st?

136 A. I believe this was when this happened, I believe so.

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Q. Did you have any conversation with supervision about the union or its dealings or anything of that nature? A. I believe I did but Tony Fazzino asked me — it was about girls being layed off and —

Q. The lay offs that occurred in late February, lay offs of Marge Peck and Eva Wilson? A. Yes, I remember it now and ask me if the union meetings had taken place and I told him that if there has been a union meeting that I would have been notified. I told him there was no union meeting.

Q. Did you sign the Palm Sunday Petition? A. Yes.

Q. Did you report to work on Palm Sunday?

137 A. No.

Q. Did you report to work that Monday? A. Yes.

Q. Was anything at all said to you upon reporting to work? A. No.

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139 Q. (By Mr. Novak): You were terminated on June 7th, is that correct?

A. Yes.

Q. Who terminated you? A. Tony Fazzino.

Q. What was the reason given by Tony Fazzino? A. Yes, for us not reporting to work on Palm Sunday.

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140 Q. Was he talking for himself in this regard? A. I couldn't tell you.
He didn't say it in the mean matter, he was nice when he talked to me. I
really couldn't tell you.

Q. He didn't threaten you in any way? A. No.

Q. Any coercion of any kind? A. Not during that conversation.

Q. He didn't make any promises to you of any economic benefits?

A. No.

Q. Neither did Mr. Lasaponara when Mr. Lasaponara talked with you
141 and Mr. Wyckoff, he didn't make any promises of economic benefits; to
the contrary, he couldn't? A. He couldn't until this union stuff is re-
solved.

Q. In fact, isn't it a fact that Mr. Lasaponara said if I give you benefits
now, it might be considered a bribe? A. He might have said that after-
wards.

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143

EXAMINATION

Q. (By Judge Stone): You had a conversation with several people, who
did you have conversations with? A. All the time?

Q. Name them? A. Well, there is John Kosh, Tony Fazzino and
Joe Lasaponara.

Q. With Mr. Lasaponara, when did you have a conversation with him?
A. Mid-December.

Q. As best you can tell me, exactly what you said and what he said?

144 A. He told me that if we voted no on the union that he could go ahead
and give us our benefits that was entitled to us and everything else and I told
him I wouldn't go against what other people wanted in this plant.

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150

PROCEEDINGS

JUDGE STONE: On the record. Call your next witness.

MR. NOVAK: Your Honor, at close yesterday, I purposely did not call a Richard F. Hayes, he was alleged as an 8(a)(3). The reason I didn't do it, we didn't allege this 8(a)(1) was Mr. Hayes. He was one of the people that signed the Petition and did not work on Sunday and was discharged in June, that is all the testimony I would have received from Mr. Hayes and the Respondent does admit they did discharge them unless Mr. Benzow wants him for cross-examination, I have no need to.

MR. BENZOW: No, we of course admit we did in our answer, discharge Mr. Hayes.

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PETER MURACA

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151

DIRECT EXAMINATION

Q. (By Mr. Novak): Mr. Muraca, did you sign a Mechanics Educational authorization card? A. Yes.

Q. Who did you receive that card from? A. Eva Wilson.

Q. Did you give it back to her? A. Yes.

Q. Shortly after Thanksgiving, November of '73, was your job in any way changed? A. I was moved from forklift operator loading trucks out to machine operator inside.

Q. I call your attention to December 20, 1973, did you attend any employee meetings, union meetings with the Employer on that date? A. I did.

Q. Were you a member of the union?

MR. BENZOW: Just a moment. Counsel is characterizing it as a union meeting. I don't think that is appropriate.

Q. (By Mr. Novak): I will rephrase the question. Did you attend a meeting at the plant on December 20th? A. Yes, I did.

Q. What type of meeting was it? A. A union meeting.

Q. What kind of a meeting, who did you meet with?

152 A. We met with union committee, Mr. Kozma, Mr. DeBella and Tony Fazzino.

Q. Were you a member of the union shop committee? A. Yes, I was.

Q. What if anything was said by the parties at this meeting? A.

Well, we discussed things, that we have a twenty-cent raise.

Q. When you say "we", give the names of the people. A. Everybody that was working at that time, right from that day there was supposed to be a twenty-cent raise but right in there and we signed papers, something like a recognition statement that benefits would be continued, things like that we all signed.

Q. What if anything did Mr. Fazzino say at this meeting? A. He said he would have to tell Joe that there was sort of like internal problems at the time.

Q. I show you General Counsel's Exhibit 7, was that the agreement you signed? A. Yes, it was.

Q. What happened when this agreement was signed to all the parties, was it given to anyone? A. Tony put in his desk and said he would hand it over to Joe Lasaponara and Joe Lasaponara --

153 Q. Was anything else discussed at this meeting regarding your status as an employee? A. Well, this was after I was moved from forklift operator inside, the only real question I asked was if you have an excuse like I have been sick and I had doctor's excuses and just because you're sick, does that mean you have to be moved from one job to another and Tony said he did it for my health so that was okay then.

Q. When was the last day you actually worked at Lasaponara?

A. Could I have a calendar or something?

JUDGE STONE: I have a calendar here.

THE WITNESS: I think it was December 21st, it was a Friday.

Q. (By Mr. Novak): Why was that your last day of work? A. Well, that was a Friday, we were supposed to work on a Saturday, the Saturday came and I live in Utica and there was a real bad snow storm and drifts and I couldn't get out of the driveway and I called in and Lindsay, the kid I go to work with -

Q. Lindsay who? A. Wyckoff, he couldn't make it either, we go up together. We couldn't get out, we called up the factory and got ahold of John Kosh and talked to him. He said okay, if you can't make it in call back tomorrow because we have to work tomorrow and Sunday came and it was just as bad and I called up and got Tony Fazzino. Tony Fazzino said if you could try to make it in during the day - I said it looks bad but I am

154 going to try. He said we don't know if we are going to work tomorrow, Christmas Eve but call in. I called in - Lindsay called in first and there was no answer so I called in too and I got no answer so I figured there would be no work.

Q. This was Christmas Eve? A. Yes, I knew Christmas we didn't work. I come in a day after Christmas to work.

Q. The 26th? A. Yes.

Q. What transpired on that day? A. When Lindsay and I got there, Tony said we were suspended for two weeks. I asked him for what reason, he said because we didn't call in Monday, we didn't come in work and call but I did call so we were suspended from that point there.

Q. Did you ask Mr. Fazzino anything at this time when he told you you were suspended for two weeks? A. Well, I asked if we could ask Joe Lasaponara since I wasn't going to get paid for two weeks, if I could have

my vacation pay. He said come back Friday when you pick up your regular check and we will find out.

Q. Did you come back? A. I came back, there was two checks there, my regular week's pay and vacation pay. Then I asked Tony, do you want
155 me to come back on the 16th, he said you could come back any time you want and I said all right. So on -- when the 17th came, I was in New York, I was out of town, I couldn't get back. So since I didn't have to get back anyhow, I waited until that Monday and waited and come in the 21st. When I come in the 21st, Tony asked what I was doing, I told him I work here and he said you don't work here anymore. We got somebody else, he took it for granted that I quit because I didn't come in the day I was supposed to.

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Q. (By Mr. Novak): Could you start where you left off? A. Could I be told where I was left off?

Q. You left off on January 21st when you returned to work. A. I came into work and he told me that I didn't come in on the day I was supposed to which he gave me no specific day and I didn't come in, he took it for granted that I quit and hired somebody else. So I asked Tony what I could do and Tony sat at his desk and filled out these papers and says,
156 sign here and I did and I said, what is this and he said a layoff slip or you're fired or whatever you want and I went down to the unemployment office.

Q. Subsequent to January 21st, did you ever return to the plant?
A. Well, on the 27th I had been on unemployment for a while and I wanted to get back to work. I was telling Lindsay Wyckoff if I could get back to work, he said the best thing would be is to go back to the plant and talk to him. On May 27th I went in the office and talked to Tony and asked Tony if I could have my job back and he said, Pete, I know we need people, I have

to wait until this union thing gets settled, I said what does this have to do with me and he said you got me in trouble and some guy from the Board had a meeting with him and some guy Oddi and I don't see what this has to do with me and if I am a good worker and need help, I don't know why I can't get work. He said he would call me so I left.

Q. Did he call you? A. No.

Q. Did you ever return to the plant after that? A. On June 10th, I went back there and went in the office and talked to Tony and asked Tony could I have my job back. He said I will have to talk to Oddi and at this time I noticed he was hiring all these new people and I noticed them and I
157 asked Tony what is this, you hired all these other people and you don't give me a call to give me a job, he said we need help and he would have to talk to Oddi and would call me. I left again and never got a call.

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161 Q. (By Judge Stone): I have one question. Your testimony was that you were in November, a forklift operator? A. Right.

Q. You were working inside or outside? A. Outside.

Q. Then what happened? A. I was getting sick outside, working out there and I have been going to the doctor for a while. Tony felt for my health, he would put me inside, inside the plant instead of being outside the plant, going in and out and in and out.

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162 JOSEPH LASAPONARA

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DIRECT EXAMINATION

Q. (By Mr. Benzow): Mr. Lasaponara, prior to December the 1st, 1973 and up to approximately April 23rd, 1974, were you the chief executive officer of A. Lasaponara & Sons, one of the Respondents here?

163 A. Yes.

Q. The general overall management of the company was in your hands, is that right? A. Yes.

Q. Just so that the Judge gets the picture, what made your business here? this business was a business engaged in manufacturer of ricotta cheese?

A. Yes.

Q. That is a principal product only? A. Not only.

Q. But that is a principal product? A. Yes.

Q. This type of - would you describe this type of cheese to the Judge just briefly, the manufacturer and the distribution of it? A. Its sort of an Italian-style cottage cheese and we distribute in the greater Metropolitan New York to pastry shops, Italian shops and grocery stores, that type of operation.

Q. As far as distribution is concerned, is there a time factor involved with this product? A. Yes, ricotta cheese is highly perishable.

Q. Likewise in the manufacture of this cheese, is there a time factor involved in the ingredients that go in the cheese?

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164 Q. Now, Your Honor, here in the Courtroom, when you heard the testimony of Mr. Kozma and DeBella about they're receiving a call from Mr. Zappone, that is Mr. Tom Zappone? A. Yes.

Q. Mr. Zappone was the head of Oneida Development Corporation, that was the corporation around the airport? A. Yes.

Q. That is where your plant is located? A. Yes.

Q. Was he instrumental in getting you to locate there? A. Yes, he was.

Q. There is no doubt that you did call Mr. Zappone sometime in the early part of December, 1973 concerning some union activity in your plant, is that correct? A. Yes, I did call him.

Q. Did you ask him to call the union representatives on your behalf?

A. Well, I asked Tom to see what he could do because we were at that time negotiating to sell the Company.

165 Q. Did you tell him that? A. Well, he knew because he was involved. In other words, to sell the company we had to get the company's permission to sell.

Q. This development corporation? A. They had to approve the sale.

Q. To shorten this up, he did arrange a meeting, did he not with the union representative? A. Yes.

Q. That was in his office? A. Yes.

Q. Would you tell us what transpired at that meeting, what was said by you, what was said by the other present and the others present were the two union representatives, Mr. Kozma and Mr. DeBella and Mr. Zappone?

A. Yes.

Q. No one else was present? A. Mr. Fazzino.

Q. Would you tell us what was said by each of these persons present during that conversation? A. Well, we went into Zappone's office, Mr. DeBella and Mr. Kozma were there after the introduction, Tom told me that he informed the two gentlemen of the possible sale and -

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166 THE WITNESS: Yes sir, Mr. Zappone told him about the sale.

MR. NOVAK: At this meeting itself?

THE WITNESS: Yes.

* * * * *

Q. (By Mr. Benzow): Is that a fact that Mrs. DeBella and Kozma were present when Mr. Zappone made this remark about the business being sold, about to be sold? A. Yes.

167 Q. Everyone was present, all the people you mentioned previously in your testimony were present? A. They were present because when

we arrived at Zappone's office, Tom said something to me to the effect that I have taken the liberty to -- of telling these two gentlemen about the sale of the business.

Q. Did he say that in their presence? A. Yes, and also mine and Mr. Fazzino.

MR. NOVAK: Objection, Your Honor. That is obviously hearsay. He testified to the fact that Tom or Mr. Zappone came up to me and told me that I told these people this. Obviously its hearsay.

JUDGE STONE: I understand his testimony that Mr. Zappone told him this, that this was told in the presence of the two union representatives?

THE WITNESS: Yes.

MR. NOVAK: He mentioned that union representatives were present in the office before he arrived, that when he arrived, Mr. Zappone came up to him and told him that he took the liberty of announcing the sale to Kozma and DeBella, that is hearsay, Your Honor.

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168 Q. (By Mr. Benzow): Now, was anything else said at that time at that meeting? A. Well, as best I can remember, we had discussion on the possibility of not disrupting my sale of the business and the union representatives turned around and said, look we wouldn't want to hurt you in anyway or jeopardize the sale of the business and there was some discussion, they didn't know how they would be able to do anything about it because it had been already sent to the National Labor Relations Board. So we left it, if there is anything they could do, they would try and help us and at that meeting I had said to them, if you can, fine, if I do not sell the business, I would recognize the union and we could sit down and discuss it.

* * * * *

173 Q. Then at a later meeting on December the 14th, was anything said about the Petition? A. That is at the Horizon Hotel?

Q. Yes. A. Yes, there was. They said that they could withdraw the Petition and that they were going to tell the people that we had internal problems.

Q. By the people, you took it to mean the employees? A. The employees.

* * * * *

176 Q. (By Mr. Benzow): What was Mr. Kosh's position in November of 1973? A. Supervisor.

177 Q. He was a supervisor of what? A. In charge of production and in charge of manufacturing the cheese itself.

Q. He was production supervisor? A. Yes.

* * * * *

179 Q. And fairly soon thereafter, would it? A. It was -- well, it had to be. I think he collected two or three weeks unemployment already.

Q. He was already receiving benefits at that point, is that it?

A. He -- yes, he started to receive benefits and then his benefits were stopped.

Q. It was at that point that Mr. DeBella called you. Did he telephone you? A. Yes.

Q. What did he say? A. Well, he told me that Pete Muraca had gone to see him and that the guy had some problems and I asked him what kind of problems and he told me that he had collected a couple weeks unemployment and knew the union had stopped his benefits because of our filling out unemployment papers and he wanted us to get back to the unemployment office and state that we made a mistake in filling out the papers, there was a mistake understanding so as he could continue to collect unemployment and at that time I told Jim DeBella I couldn't do a thing like that because I would be putting the company in jeopardy with unemployment.

180 Q. In other words, the Company had filed a bad report concerning Mr. Muraca, lets put it, and he was trying to get you to make that into a good report? A. Right.

Q. This was after or subsequent to when Mr. DeBella withdrew the Petition for the Union, wasn't it? A. Yes.

Q. Now, you said that the -- strike that out. When did you say the transaction for the acquisition of your business was expected to be closed?

A. The beginning of March.

Q. When in fact was it finally consummated? A. We had a closing on March 7th, that was held in escrow.

Q. When did it actually take place? A. April 23rd.

Q. At that time did you resign as office and director? A. Yes.

* * * * *

CROSS EXAMINATION

Q. (By Mr. Novak): Mr. Lasaponara, your company is still a wholly-owned subsidiary of ERE? A. Yes.

181 Q. You sold your stock in the corporation to ERE? A. Yes.

Q. You are still A. Lasaponara, its called that? A. Yes.

Q. There is no outward change in the ownership of the company, you still have Lasaponara trucks, the same supervision, the products the same, am I correct? A. Yes.

Q. Mr. Fazzino is still there, you're still there, anybody from ERE working there in a supervisory capacity? A. No, but neither are Mr. Fazzino --

Q. Just answer the question. Mr. Fazzino is still supervisor, am I correct? A. Yes.

Q. You are still supervisor over there? A. I am sales manager, I have nothing to do with plant operations anymore.

Q. I call your attention to the December 12th meeting with the union and I believe your counsel referred to as December 10th but I think its December 12th, that is the meeting Mr. Zappone arranged for you with Mr.

Kozma and Mr. DeBella. I want you to draw a picture for me of this meeting. Were Mr. DeBella and Kozma present in the office when you arrived?

A. Yes, they were.

182 Q. Who did you talk with in the office with Mr. Zappone? A. Mr. Fazzino.

Q. Was Mr. Fazzino in the office at that time? A. Yes, he was.

Q. What happened when you got in the door with Mr. Fazzino?

A. Mr. Zappone introduced us to Mr. DeBella and Mr. Kozma and Mr. Zappone told me when we started our discussions that he had taken the liberty of telling these two gentlemen about the sale of the business.

Q. Where were Mr. Kozma and DeBella? A. Where were they?

Q. Yes. A. On the opposite side of the table.

Q. Mr. Zappone stated this at the table? A. Yes.

Q. Are you sure he said sale and not merger? A. He may have said merger, I don't know.

Q. You don't know whether he said sale or merger? A. Exactly, no.

Q. You maintained at this meeting also you said to these representatives, if I do not sell I would recognize the union, then you don't know whether you said merger or sell at that time? A. Its a sale, it wasn't a merger. If I were to refer to it, I refer to it as a sale.

183 Q. What did you say at that meeting; do you know whether you said merger? A. Well, I assume I said sale.

Q. You assume, you don't know? A. Well, you're you are bring up this point of merger, you know if you want me to -

Q. I'm not bringing up the point, that is what my witnesses tell me.

A. Maybe they assumed it was a merger.

Q. I am asking you what you think you said? A. I think I said sale.

Q. You think you said that but you're not sure? A. You asked me what I thought. I said I think I said sale because to me it was a sale not a merger.

Q. I call your attention to the meeting on December 14th that was the time that Mr. Kozma and Mr. DeBella met with just you. I guess Mr. Fazzino wasn't at that meeting and I believe it was at that Horizon Inn or something, is that correct? A. Right.

Q. Now, they told you what type of things they would want for their employees, they wanted twenty-five cents a hour, am I correct? A. Yes.

184 Q. Then they told you that they wanted a — I guess you have some type of policy that where employees get periodic raises or something like that based on merit or an automatic type thing, they told you they still wanted that? A. Yes, I believe so.

Q. They told you they wanted some type of hospitalization and insurance, am I correct? A. I don't believe they said they wanted some type of hospitalization, they wanted us to change the hospitalization we had.

Q. Something about life insurance, correct? A. Yes, I believe so.

Q. Its correct you said you wanted to pay twenty cents instead of twenty-five cents, is that correct? A. Not that I wanted to pay twenty cents. I told them that I couldn't pay a quarter, I wanted to pay twenty cents, I guess its the same thing.

Q. Also, listed the benefits to you, they said they wanted recognition, is that correct? A. No, I don't believe so.

Q. Did you dispute — you said you couldn't pay twenty-five cents, you're going to pay twenty, isn't it a fact that that means you didn't dispute the hospitalization or the automatic increases or anything like that. You just specifically talked about the twenty cents? A. No, its not that. I didn't dispute them, we already had these benefits. As a matter of fact I mentioned

185 to Mr. DeBella, he said to me we would like to see where you pay for the employee and the employees pay for their dependents and I said why would the people want something like that because its probably going to cost them more and I said the way we have it set up, its better for the people. I don't understand why they would want something like that.

Q. Did you bring up at that meeting whether you were being credited for twenty cent increase you would be granting? A. I don't believe so.

Q. You never brought that up? A. I don't think so.

* * * * *

187 Q. You stated that you and Mr. Fazzino talked about a twenty cent increase sometime in November, is that correct? A. Yes.

Q. Did you announce this to the employees, did you tell the employees they were going to get it? A. No.

Q. Why not? A. I don't feel we should tell the employees everything about our business.

Q. You stated after the union withdrew its Petition in that R case that no demands were made on you as to negotiations, proposals or anything of that nature, is that correct?

188 A. Yes.

Q. I show you General Counsel's Exhibit 10, isn't that a letter addressed to you? A. Yes, it is.

Q. What does that look like, what is in that letter? A. Well, this is -- this letter is referring to a telephone call. Mr. DeBella called me and told me that some of the people were going to -- weren't happy and were complaining about some benefits.

Q. Isn't it a fact you told them to put it in writing? A. Yes.

Q. This is the letter you got as your request to put it in writing?

A. I told him to put his request in writing.

Q. After the withdrawal of the Petition, Mr. DeBella did discuss some problems with you about employees, employees didn't receive the six-month raise in Exhibit 10, what employees did not receive his twenty cents an hour increase, in addition a number of employees didn't receive their group health insurance which they are eligible to after six months. These are the type of proposals that were discussed at the meeting of December 12th, isn't that correct? A. Yes.

Q. Mr. DeBella wrote this letter to you and called you about this?

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A. He called me then wrote the letter.

Q. Stating that the company wasn't meeting up to my type of commitment made on December 14th? A. Never made a commitment. This letter meant nothing to -- yes, cleverly requested a number of things.

Q. Are you aware of two employees, three employees being layed off, Marge Peck, Eva Wilson and a Pat Wilson? A. Yes.

Q. Are you aware that as soon as they were layed off, the union contacted your supervisor, Mr. Fazzino and in turn contacted you? A. That is correct.

Q. Instead of continuing the lay off, you brought them back to work, isn't that correct? A. You want a direct yes or no on this or a reason why?

Q. What I understand, they were layed off on a Thursday because some work that was being done in the plant, they wouldn't have worked Friday or anything? A. They were slowing down because of production anyway.

Q. Why did you bring them back? A. Because Mr. Fazzino arrived at my negotiation office, he told me he received a telephone call from Mr. DeBella, apparently these people went to Mr. DeBella and told him that they were being layed off, Mr. DeBella in turn called Mr. Fazzino, told him these people were going to start trouble and bring us before the Labor Board and

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claim, you know -- discrimination, so we truthfully became -- I got scared because we were in the process of reading to close with the ERE.

Q. So if Mr. DeBella never contacted Mr. Fazzino this lay off would have continued? A. If he did not, probably yes, if he didn't say this and threaten us.

Q. You acted pursuant upon his request? A. Not upon his request to me, if felt more like a threat.

Q. He didn't threaten you, he said the lay off was improper? A. Said the people were complaining, they were going to the Labor Board.

Q. Is that a threat? A. I took it as a threat.

Q. A person pursuing their legal rights, is that a threat? A. I took it as a threat.

Q. I am asking you, a threat, a person pursuing their legal right, is that a threat? A. I suppose not, no.

Q. With regard to Muraca unemployment matter, isn't it a fact that Unemployment Insurance Law or I don't know if its a law or no matter where it is, if an employee is discharged and the discharge for cause, he doesn't get unemployment insurance, correct? A. Yes.

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Q. If he is layed off, he gets unemployment insurance? A. Right.

Q. When Mr. Muraca was receiving unemployment insurance for you say two or three weeks and that as a result of papers you filed, the unemployment insurance was stopped and I suppose you said he was discharged for cause, isn't that correct. A. Yes.

Q. Words to that effect? A. Right.

Q. Isn't it a fact that Mr. DeBella called you up and said there may have been a misunderstanding, that he told you that Mr. Fazzino, your supervisor stated he did not discharge them but layed them off and he wanted you to look into that and change the report to reflect that Mr. Fazzino told Mr. Muraca its

actually a lay off and not a charge. Did he say he asked you that?

MR. BENZOW: Your Honor, he is not asking a question, You have to ask a question of the witness for him to respond.

JUDGE STONE: I think it is a question.

THE WITNESS: When Mr. DeBella called me up he had said that Pete Muraca had gone to him and his unemployment was stopped and asked what I could do about it to change it.

Q. (By Mr. Novak) You're not answering my question. A. Yes, I am.

Q. I am asking whether he said anything about Mr. Fazzino — Mr. Fazzino didn't tell Muraca that he was discharged, that he was layed off, didn't he tell you that? A. No, what he said, there was a misuse of words or something to that effect between Muraca and the understanding between Muraca and Tony.

Q. Misuse of words between Tony and Muraca? A. Yes.

Q. That misuse of words is discharge versus layoff, is that the misuse of words? A. I don't know, I wasn't there.

Q. Ultimately that unemployment insurance matter was resolved? A. Yes, it was.

Q. The unemployment insurance people gave a word to Mr. Muraca stating that it was not a discharge for cause but was a lay off, isn't that correct?

A. Truthfully, I was not involved.

Q. You must have gotten a notice? A. No, I wasn't because at that time when they had the hearing, ERE was the principal, not me.

Q. Are you aware of that? A. I am aware they had a hearing.

Q. It was resolved in Mr. Muraca's favor?

JUDGE STONE: The record of that decision is already in?

MR. NOVAK: Yes. At the meeting of — I show you General Counsel's Exhibit 7. You received that, am I correct?

THE WITNESS: No, I didn't.

Q. (By Mr. Novak) Did you receive it from Mr. Fazzino? A. No.

Q. Why did Mr. Fazzino give you — A. Because I told him I didn't want it.

Q. He told you about it? A. He told me about it.

Q. Did you hear Mr. Kozma and Mr. DeBella testify yesterday? A. Yes.

Q. Do you know of any reason why they testified to the fact that Mr. Fazzino told he was going to afford it to you, the reason he didn't do it because it was the holidays, do you know why Mr. Fazzino told him that?

MR. BENZOW: I object to the question. The witness can't read somebody else's mind.

MR. NOVAK: He gave Mr. Fazzino directions?

JUDGE STONE: The question is so long.

Q. (By Mr. Novak) Mr. Kozma and Mr. DeBella testified that subsequent to handing over the recognition agreement to Mr. Fazzino a few days later or a week later they called him and said what about the recognition agreement and Mr. Fazzino said something to the effect that it was the holidays, he hadn't forwarded it to you in negotiations. Do you know of any reason why Mr. Fazzino would have told Mr. Kozma and DeBella this? A. No, I don't.

* * * * *

Q. You are aware that you brought these employees in your office two by two, is that correct? A. Right.

Q. You told them this is a family run operation, everybody gets along, is that correct? A. Yes.

Q. You said why do you need a union because we were a family run operation? A. Yes, I asked them why they wanted a union, why they thought they had a need for it.

Q. Also in answer to a question, you never promised an employee benefits and you said you never promised employees benefits, am I correct? A. Right.

Q. But you did, you never promised them you would give them certain things or benefits, am I correct? A. Right.

Q. You talked to employee, Gary Bartle, am I correct? A. Yes.

Q. You did tell him if he voted no against the union, that the benefits -- that certain things that you had in store to give employees would be given to employees, isn't that correct? A. No.

197 Q. You never said that to him? A. No.

Q. What did you say to him? A. Basically what I said to employees was what I said to all employees.

Q. What did you say to him? A. I don't recall what I said to him.

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TONY FAZZINO

* * * * *

DIRECT EXAMINATION

Q. (By Mr. Benzow) Mr. Fazzino, what is your title at Lasaponara at the present time? A. Plant Manager.

Q. What was your capacity on December 1, 1973? A. Repeat that please?

Q. What was your job on December 1, 1973? A. I was owner-partnership with Mr. Lasaponara & Sons.

Q. In other words, you were a stock holder, were you? A. Right.

201 Q. Were you also plant manager at that time or was that your function?
A. Right.

Q. Is there a Mr. Don Fettes presently employed there? A. Yes sir.

Q. What is his title? A. His title is Assistant Plant Manager.

Q. Did he come from ERE Industries? A. Yes.

Q. He was approximately -- when did he come in there in that capacity?

A. June 24, 1974.

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Q. (By Mr. Benzow) What was Mr. Kosh's capacity at the plant in late November of 1973, what was his job? A. Production Foreman.

Q. Did he have any powers of hiring and firing? A. No sir.

Q. Who had that power? A. Myself.

Q. Did Mr. Kosh enter into any of the stockholders meetings or director's meeting of the company? A. No sir.

Q. Did he have anything to do with the policy making of the company?

A. No.

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Q. Did you instruct Mr. Kosh to make the statement that was alleged, mainly that the union would not be permitted? A. No sir.

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Q. (By Mr. Benzow) On March the 5th of '74, did you meet with Mr. DeBella and Eva Wilson in regard to employee benefits and wages and so forth?

A. Yes, I did, I think -- yes.

Q. What did you tell Mr. DeBella? A. Tell what?

Q. What did you say to Mr. DeBella when he brought up these questions about wages and hours and so on? A. I told they had all the benefits that they had before.

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Q. Were you at the meeting toward the end of March, 1974 when Mr. Oddi came to the plant? A. Yes.

Q. This was a meeting with the employees? A. Yes sir.

Q. Did you introduce Mr. Oddi to the employees? A. No, I called the employees all to a room and Mr. Lasaponara introduced Mr. Oddi.

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214 Q. Mr. DeBella stated yesterday that on April the 6th of 1974 he called you in regard to the Petition that the employees had drawn up concerning working on Palm Sunday, is that correct? A. Yes.

Q. Did he call you? A. Yes.

Q. What did he say to you at that time? A. He called me around 2:30 Saturday afternoon, April 6th and asked me if Eva Wilson gave me the Petition, I say yes and I told Mr. DeBella I was very upset, it was a holiday, I said I don't recognize this piece of paper, it was a holiday and everyone knows we have to work. I have cheese, I have production to meet, I have milk to come in and I don't know what to do. Mr. DeBella said its a religious holiday, they don't want to work. I said fine, they should tell me in advance, they don't want to work on Palm Sunday. He said they are willing to work overtime on the following week. The following week, I explained to Mr. DeBella, it was too late. I manufacture and distribute. Goshens, they send a truck out, my
215 merchandise had to go out on a Thursday of the week, so Mr. DeBella said we'll try to have them work overtime, I told Mr. DeBella it was too late.

Q. Now, I think the Judge would appreciate information about this cheese business. Is it a seasonal business? A. Yes sir.

Q. What are the busiest times of the year? A. Easter.

Q. Is that the busiest time of the year? A. Yes sir.

Q. What is the custom in this ricotta cheese business regarding working on Palm Sunday? A. Well its -

MR. NOVAK: I - well, strike my objection.

JUDGE STONE: Go ahead

THE WITNESS: The procedure that of Ricotta Cheese has - can't be made by machine in advance, we can't hold milk, its no merchandise that is hold for the storage, its got to be sold day to day.

Q. (By Mr. Benzow) Well, how long has Lasaponara been in the cheese

business? A. I have been with Lasaponara twelve years and it must be about thirty years.

Q. Had you worked -- had the employees worked Palm Sunday previous 216 to 1974? A. I worked Palm Sunday for the last twenty-five years when I was working in the cheese business.

Q. Is this the practice in other similar cheese factories? A. Any Italian cheese company.

Q. Now, the statement was made by Mr. DeBella that you told him in that conversation on the phone on April the 6th that Eva Wilson was a trouble maker. Did you ever call her a trouble maker? A. No, I never called Eva Wilson a trouble maker.

Q. It is also alleged by -- or testified to by Mr. DeBella that you made the statement "in the future, I am going to be a real boss and no more fooling around". Did you make such a statement? A. I don't make that direct statement and I said I don't deserve to be treated that way because I have been good to everybody. The only guy that suffers is me, not the men.

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217 Q. Mr. Fazzino in December of 1973 according to the Petition which is General Counsel's Exhibit 10, it says the number of employees at the present time is twenty, is that approximately the number in December of 1973? A. Yes sir.

Q. As of the present time, how many employees do you have? A. About twelve.

Q. How long has that condition continued having twelve employees? A. Until the business increase.

Q. When was the employment reduced to twelve? A. Since after Easter.

218 Q. Easter of '74? A. Right.

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Q. Would you tell us what the situation was in regard to Mr. Muraca's employment or termination of his employment?

A. Mr. Muraca was start not showing up to work everyday, start missing a lot of days to work. That was going on for a couple of months and I called Mr. Muraca's attention and say what is the matter, something wrong, what could we do. A lot of
219 times he was sick, he told me this and this was going on and on and I told Pete, what is the problem, he said well, I don't get enough sleep, I go out every night, I have been gambling and I can't come to work and I said you had better make up your mind, your job or gambling, he said I will try to keep my job and I give him a chance and he was — keep doing this all the time and finally I suspended him for two weeks.

Q. When was that?

A. It was around Christmas, the day before or the day after the holiday, the 25th or 26th, somewhere around there. I suspended him for two weeks and I told Mr. Muraca to come back to work on January the 9th. He was supposed to be on a Monday and he said to me, the two weeks is over on Wednesday, I said fine, come back when you want, Monday or Wednesday and he said about my vacation pay, he said maybe I could get another job and I'd lose my vacation pay and I told him to come back the following Friday and got both checks, that is it, then Monday, January 9th, the other fellow that was with him, he came to work.

Q. Mr. Wyckoff?

A. Yes, Lindsay Wyckoff and I give him a chance, I figure we had Mr. Muraca coming to work Wednesday, he never came, Thurs-
220 day he never came, Friday he never came and never called up. He came to work the following Monday. On Friday, when nobody called up, I hired somebody else. When he came Monday I told him your job was taken, you're supposed to come back to work Monday, he told me what I want, I said Monday or Wednesday, you never called to tell me you were coming Monday, that is it.

Q. Now was that essentially the report that went into the Unemployment

Insurance Office?

A. Then the employment office sent me the paper.

Q. You filled it out that way and sent it in? A. I gave the information to the office, the reasons for Mr. Muraca and I told the reason, he never came to work when he was supposed to work.

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221 Q. The people who did not work on Palm Sunday, were whom, do you recall? A. Eva Wilson, Marge Peck, Billy Bonville, Bob Kraeger, Gary Bartle, Dick Hayes.

Q. Did Mr. Oddi tell you anything — tell you to do anything in regard to these people? A. Monday after Palm Sunday, I called Mr. Oddi and I told the people did not come to work. Mr. Oddi said don't do anything, let me investigate and I will let you know what you're going to do.

Q. That was a day after Palm Sunday? A. Yes.

Q. So nothing was done until June the 7th? A. Yes.

Q. That is when you received a telephone call from Mr. Oddi? A. Yes sir.

Q. What did he tell you to do? A. He told me that the people never came to work on Palm Sunday to be dismissed and I asked Mr. Oddi what reason, because I forget about — about Palm Sunday and he said, tell the people they were dismissed for not reporting to work when we needed them.

Q. I didn't hear the last part, not report to work? A. When we
222 needed them.

Q. Did you inform these people? A. Yes, that was on Friday, I think it was June 7th, it was the Friday when I give the pay check, I call the six people and I explained I got a call from Mr. Oddi and the reason he told me not to report to work Monday and they say why and I said he told me the reason because you don't show up to work Palm Sunday.

Q. There was some testimony regarding, from these employees regarding

whether this was a temporary layoff or not and what did you tell them? A.
I told them as far as I know everybody got fired.

Q. That it was not temporary, is that what you mean? A. Right.

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CROSS EXAMINATION

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228 Q. I can't recall on that December 20th meeting you say Mr. DeBella or Mr. Kozma told the committee people present at that meeting, he was going to withdraw the Petition or something, did you say something to that effect?

A. He withdrew the Petition.

Q. At that meeting? A. He explained to the committee people we have some problems and that we don't know what we are going to do. We have an internal problem.

Q. Wait for a while? A. Yes.

Q. Do you recall April 1st, '74 date? A. It was on a piece of paper you give to me.

Q. Do you recall any discussion, what he told the people April 1st? A. He told the people that there was no union until April 1st.

Q. He told the people that; did he say he couldn't sign a full agreement until April 1st? A. It was in the contract, nothing.

229 Q. Did he say he couldn't sign the contract, full agreement, contract until April 1st? A. I don't know, there was no union until April 1st.

Q. Did he say that verbatim or are you characterizing what he said; let me ask that a different way, did he say that or are you think he said that? A. That's right.

Q. What you believe? A. That is what I believe he said.

Q. The essence of what he said? A. Right.

Q. I show you General Counsel's Exhibit 10, that is a letter regarding certain people that had some problems at the plant. Now, then you testified you couldn't recall whether this was sent to you or to Mr. Lasaponara. I wonder if I could refresh your memory. Do you recall a meeting at the plant on or about the date, the same date that that letter bears, that is March 8th, do you recall a meeting? A. Yes.

Q. At that plant on that day? A. Yes.

Q. With Mr. DeBella, you, Eva Wilson, do you remember that? A. We had a meeting.

230 Q. He gave you this letter at that meeting? A. The way I said before, I saw the letter and I don't recall if it was that meeting or came in the mail but I saw a letter.

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Q. (By Mr. Novak) Are you aware that the context of that letter, Mr. Lasaponara wanted, that put into writing by the union and given to you? A. I was never aware what was discussed between Mr. Lasaponara and Mr. DeBella and
231 Mr. Kozma.

Q. Mr. Lasaponara didn't tell you? A. No.

Q. Do you recall at that December 20th meeting when the union gave you that recognition agreement, do you recall if Mr. DeBella told you there was any problems at the plant that you were to take them up with the union shop committee and the chairwoman specifically, Eva Wilson? A. I think so.

Q. What was your reply to that? A. Reply what?

Q. Did you say you would do it or wouldn't do it? A. Yes.

Q. You would do it? A. If I had any problems, yes.

Q. When Eva Wilson gave you the Palm Sunday Petition around April 4th, I believe or 5th, did you crumble it up after she gave it to you? A. Yes, I did.

Q. You later straightened it out and accepted it? A. What do you mean?

Q. You took it? A. She gave it to me and I read it, until that time I don't know anything about it.

232 Q. You got upset and crumbled it up, then later you calmed down and opened it? A. Sure I left it on the desk.

Q. Is that a Friday or Saturday before Palm Sunday; isn't it a fact you had a conversation with Mr. Kozma and you stated that if employees don't want to work Palm Sunday, they don't have to work Palm Sunday? A. I never had a conversation with Mr. Kozma, I had one with Mr. DeBella.

Q. Did you tell him that if they don't want to work, they don't have to? A. I can't force them to work. I asked them to work.

Q. Answer that question. Did you tell Mr. DeBella or Mr. Kozma that if they don't want to work Palm Sunday, they don't have to work Palm Sunday?

A. I said to Mr. DeBella, they don't want work, they don't work, I can't force them to work.

Q. That is what you said. You mentioned the word "force"? A. Yes.

Q. You're sure you didn't talk to Mr. Kozma in addition to Mr. DeBella; Mr. Kozma on Friday and Mr. DeBella on a Saturday? A. No, sir, no, sir.

Q. You did not or you can't recall? A. I never speak to Mr. Kozma.

233 Q. Now, you testified that when employees returned to work on Monday, nothing was done until June 7th? A. That's right.

Q. Nothing was done in the interim, in the period between that, am I correct? A. Yes, I told the people Friday night when they handed me the Petition, I sent the list to Mr. Oddi.

Q. From that time till June, nothing was done? A. If it was up to me I would have fired them the same day.

MR. NOVAK: Strike that, Your Honor.

JUDGE STONE: Strike that.

Q. (By Mr. Novak) You were aware when the Petition was presented to you that was just going to be a done day refusal of work, that is going to be for one day? A. Yes.

Q. The employees presented you with this Palm Sunday Petition, you didn't ask them whether they would be doing this in the future years or going to refuse to work any more future scheduled time, you didn't ask that, did you? A. No.

Q. You didn't ask them then or ask them at all? A. I didn't ask at all.

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234 REDIRECT EXAMINATION

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235 Q. (By Mr. Benzow) Now, at that meeting that was held in Mr. Zappone's office on or about December 10th, Mr. Lasaponara testified that he stated to the union representatives that if I don't sell the business then I will sit down with you. Did you hear him make that statement? A. Yes.

Q. Were both Mr. Kozma and Mr. DeBella present when he made it? A. Yes.

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237 WILLIAM RADLEY

* * * * *

DIRECT EXAMINATION

Q. What is your present capacity? A. Production Foreman.

* * * * *

240 Q. [By Mr. Benzow] Now, believe you and Mr. William Bonville had a meeting with Mr. Lasaponara sometime around -- well, in December of 1973 in Mr. Lasaponara's office, is that correct? A. Yes.

Q. Was this the occasion when Mr. Lasaponara was having the employees come in two or three at a time to talk to him? A. Yes.

Q. Was there anybody else present beside yourself and Mr. Bonville?
A. Joe of course.

Q. Would you describe this office, is it a very big office or what is it; could you give us the size of it? A. Eight by ten.

Q. What was said by Mr. Lasaponara at that time? A. He asked why we wanted a union and just talked to us in general and told us that he didn't see where we needed a union, everybody was treated alright.

Q. What did Mr. Bonville say if anything? A. Not too much that I recall. I recall him asking for his duties, he loaded the trailer and unloaded the trailer and worked in the plant also and he asked Joe for a raise at that time.

Q. What did Mr. Lasaponara reply? A. He said he couldn't do anything at this time. If he did give a raise, it would constitute a bribe.

241 Q. Did Mr. Bonville reply to that? A. No.

Q. Was there any — was this an angry meeting? A. No.

Q. Was there any shouting? A. None whatsoever.

Q. Any animosity at that time at this meeting? A. No.

Q. Any vulgar language or swear words used? A. I used a few myself.

Q. You did? A. Yes.

Q. Well, did Mr. Lasaponara use any? A. No.

Q. Then did the meeting conclude? A. Yes.

Q. You and Bill Bonville left together, did you? A. Yes.

MR. BENZOW: I have no further questions.

JUDGE STONE: Cross examination?

CROSS EXAMINATION

Q. (By Mr. Novak) Mr. Bonville, you are a supervisor, right, Production Foreman?

MR. BENZOW: This is Mr. Radley.

242 Q. (By Mr. Novak) Mr. Radley, excuse me, you are Production Foreman? A. Yes.

Q. The same position Mr. Kosh held one time? A. Yes.

Q. How did you come to testify here; were you asked to testify? A.

Q. Who asked you? A. Mr. Oddi.

Q. Mr. Oddi? A. Yes.

Q. Did he ask you — did he go over what would be asked of you today?

A. I just recall the meeting we had in the front office.

Q. When you met with Mr. Oddi, was Mr. Lasaponara there? A. No.

Q. I call your attention to December 15th meeting, where you testified he asked you about why you wanted a union but there was no promise, benefits of this nature, is that basically your testimony? A. Yes.

Q. Do you recall that during the course of the meeting, that Mr. Bonville may have not been paying attention and Mr. Lasaponara may have said something to him to get his attention? A. No, he was paying attention.

243 Q. Did Mr. Lasaponara say anything like everything was just like a family as we all know each other and that? A. Yes, he did.

Q. Do you recall him saying -- do you recall him saying if we were all like a family here, why do you need a union, something to that effect? A. Yes.

W. Did say that if you F me, I will F you? A. No, he did not.

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245 NORMAN T. BOLTON

* * * *

DIRECT EXAMINATION

Q. (By Mr. Benzow) Mr. Bolton, you're presently employed at A. Lasaponara? A. Yes.

Q. In what capacity? A. I wash cheese cloth.

Q. How long have you been with them? A. November 17, 1972.

Q. Have you ever held a foreman's job or supervisor's job with the company? A. No.

246 Q. Do you recall a meeting with Mr. Lasaponara sometime in December of 1973 when he asked you to come by the office and he asked about whether you wanted a union or not? A. No.

Q. Was there anybody else at that meeting? A. No one there, --

there was another fellow with me.

Q. John? A. John Tartaglia.

Q. You went in together and met Mr. Lasaponara and nobody else was there? A. Nope.

Q. What was said on that occasion by all of you starting first of all, what did Mr. Lasaponara say? A. He didn't think we needed the union.

Q. What did he say, anything other than that? A. No.

Q. What did you say if anything? A. I didn't say anything.

Q. How about Mr. Tartaglia, did he say anything? A. I don't remember.

Q. Well, how, did Mr. Lasaponara use any foul language at that meeting?

A. No.

Q. I take it he just asked questions why you wanted the union or some-
247 thing along those lines? A. Yes.

Q. Did he use any threats or make any promises? A. No.

Q. How long were you in there, by the way? A. Oh, probably fifteen or twenty minutes, I guess.

Q. What else did you talk about? A. I forgot now.

Q. Now, were you at the meeting that Mr. Fazzino called on or about April the 5th, 1974 concerning a petition that was signed about not working on Palm Sunday; were you present at a meeting about that? A. Yes.

Q. Now, was this a meeting at which all the employees were in attendance? A. I think everybody was getting ready to go home when he asked.

Q. Was it at the end of the day? A. I think so.

Q. Were all the employees there? A. Yes.

Q. I show the paper in question which is General Counsel's No. 4. I ask you if that is your signature on that paper? A. Yes.

Q. Who asked you to sign that? A. Somebody brought it around, I

248 don't know who it was.

Q. Now, the meeting that Mr. Fazzino called, was in connection with this paper, is that right? A. Yes.

Q. What did Mr. Fazzino say at that meeting? A. He asked who was going to work.

Q. Did he say anything about production and the milk coming in? A. Yes.

Q. Did he explain the situation? A. Yes.

Q. He asked who was going to work? A. Yes.

Q. What did you respond? A. I said no first.

Q. Then did he explain it to you further? A. He said we were going to be short.

Q. What did you say then? A. Then I changed my mind and come in Sunday.

Q. You did come in and work on that Palm Sunday; now, did any of the employees criticize you for coming into work on Sunday? A. Yes.

Q. Did anybody call you any names? A. Called me a traitor.

249 Q. Who was that? A. Billy Bonville.

Q. Did somebody say anything about -- by the way, had you signed a membership card in the union? A. Yes.

Q. Did anybody make any remarks to you about that membership card? A. No.

MR. BENZOW: I have no further questions.

JUDGE STONE: Cross examination?

MR. NOVAK: No questions.

JUDGE STONE: You're excused. Call your next witness.

(Witness excused.)

MR. BENZOW: M. Tartaglia, please.

* * * * *

JOHN TARTAGLIA

* * * * *

DIRECT EXAMINATION

Q. (By Mr. Benzow) Mr. Tartaglia, you work for Lasaponara at the present time? A. Yes, sir.

* * * * *

250 Q. I take you back to December of 1973 when you were employed at Lasaponara. Did you attend the meeting in Mr. Lasaponara's office with Mr. Bolton? A. Yes, I did.

Q. Would you tell us what was said by all at that meeting? A. Well, he started out, he said that --

Q. Who was he? A. Joe.

Q. Mr. Lasaponara? A. He said that he didn't want a union to come in because we were all a family group. He started like that and he wanted to know why we wanted a union in.

Q. Did you tell him? A. I didn't say anything at the time. I just said that everybody wanted a union in and that was it.

251 Q. Did Mr. Lasaponara use any foul language to you? A. None whatsoever.

Q. Was he abusive in any way? A. No.

Q. Was he threatening or make any threats or threaten to fire you? A. No, he didn't.

Q. Did he make any promises of any kind? A. No, he didn't.

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252 FRANK ODDI

* * * * *

THE WITNESS: Frank Oddi, 39 Miopia Hill Road, Winchester, Massachusetts.

DIRECT EXAMINATION

Q. (By Mr. Benzow) Mr. Oddi, you're President of Lasaponara & Sons, Inc. at the present time? A. I am.

Q. You're also the President of ERE Industries, Inc., the other Respondent? A. ERE Industries?

Q. ERE Industries? A. Yes.

Q. Will you tell us please when you became the President of Lasaponara? A. On April 23rd, 1974.

Q. Did that happen to be the day that the transaction with Mr. Joseph Lasaponara was concluded for acquisition of the business? A. It was
253 concluded and his finality on that date. In other words, the escrow was dispursed.

Q. When did the negotiations first begin for the acquisition of this business? A. Of A. Lasaponara?

Q. Yes. A. About August of 1973.

Q. There has been some testimony that the closing of the transaction was to have taken place in March of 1974, is that correct? A. Yes.
The finite closing was to have taken place in March of 1974. To elaborate a little if you wish me to, the closing was to have taken place earlier than that but for reasons I could go into or not, it did not but the papers were finally prepared and signed on March the 6th, March the 7th, 1974, pending receipt of one document which was of critical importance and without that document this closing would not have been completed. So why we were waiting for that document, everything had been signed and was held in escrow and the - then the document was finally received and escrow dispursed on April 23rd

* * * * *

254 Q. The finalizing of the transaction? A. Right. The closing had taken place, a document we had been waiting for had been promised or had been told it would be received and the meeting with the plant people on —

Q. Did you have the date for that meeting? A. I do. The exact date is March 27th at 2:00 o'clock in the afternoon.

Q. Well, what I am getting at, Mr. Oddi, on March 27th you were not then a President of the corporation, were you? A. No, and I mentioned that briefly.

Q. You were not on the Board of Directors at that time? A. No, I was neither an officer nor on the Board nor had any authority in the company.

Q. As a matter of fact you weren't even a stockholder at that point, perhaps, the stock was in this escrow that you are talking about? A. That's correct.

Q. You were introduced by Mr. Lasaponara at that meeting to the employees of the company, were you not? A. I was.

Q. You did address the employees at that time? A. I did.

Q. What did you tell them? A. Well, I told them first I had been introduced as the President of the Company and I told them that
255 was not quite accurate because this was still in process, we fully expected it would be completed and that I was there to get acquainted and to let them know a little bit about the company that was taking over A. Lasaponara because by that time there had been many rumors floating around that I wanted to put to rest about who and what and when and that, I wanted to acquaint them with the parent companies or intended parent company benefit programs which is a matter of company policy was extended to all other operations in our own company and would be also extended to the employ-

ees of A. Lasaponara and then I went on to describe to them in fairly finite but general terms.

Q. Well, in point of fact, were those benefits extended to all of the employees of A. Lasaponara? A. Those benefits were extended to all employees of Lasaponara exactly in the manner we described.

Q. On what date? A. I think for the most part they were extended on -- well, for the most part they were extended beginning April 1st -- correction, beginning May 1, 1974 with the exception of the life insurance as I had explained would be extended at a later date when incorporated Lasaponara group insurance -- correction, group health insurance policy into that of the parent company. More specifically, Lasaponara has
256 Blue Cross Blue Shield, the parent company has another plan and its under that plan that the life insurance is extended. I explained that to them and this is being done on the time schedule that I did describe.

Q. Well, is it a fair statement, Mr. Oddi, to say that, that after you became President on April 23rd, which was when you really got in the driver's seat, there were certain mechanics that had to be gone through to implement these benefits? A. Oh, yes.

Q. That was as of this time it had been accomplished? A. To the best of my knowledge, it has all been accomplished. As a matter of fact, I think there were one or two instances where sick leave or I am not I really don't recall clearly, I think it was sick leave or leave we extended to the people who have members of the deceased and the immediate family that we extended immediately. The question came and we said let's follow the policy immediately.

Q. When did you first receive the intelligence that there was a union situation involved in Lasaponara? A. I first learned of anything like that was with respect to a union by way of a telephone call from Joseph

Lasaponara on or about -- within the period of the 10th or the 15th of January, 1974.

257 Q. What did he say to you on that occasion? A. Joe Lasaponara called me up and said I feel that you should know that there has been an attempt in our plant as a union activity, incidentally, I'm not trying to quote him verbatim but in essence that there has been union activity in the plant. However, that he felt it was uncontrolled. I told him this was something of great interest to me and in terms of what was being done and how and to keep me informed and that in substance was the end of the call.

Q. Did he on that occasion tell you anything about the union filing a Petition? A. No, I knew nothing of the Petition.

Q. Or anything about the recognition agreement? A. No, I know nothing about the recognition. I knew nothing of the recognition agreement until this year.

Q. When was it that you first learned that it was claimed that a majority of the employees had designated the M.E.S.A. Union to represent them?

A. I didn't not know that a majority had designated this particular union to represent them until yesterday. As a matter of fact, I had no knowledge that there were even signed cards in existence regardless of number.

Q. Now, between the time, sometime around January 10, 1974 when Mr. Lasaponara first talked to you about the fact that there was some union activity, did you have any other discussions either with him or with Mr.

258 Fazzino on this subject? A. Yes, I talked further. Mr. Lasaponara called me at least one or two other times to advise me of any additional activity that may have taken place. I think he said he had been contacted again by the Union with respect to what might amount to grievances and I told him he should be very careful in handling these matters so that one, he didn't wind up in a position where he was causing the Union to dictate

to him even though he had not recognized the Union or not even negotiated with the Union as I have been told and secondly, if he was authorized to commit our company or to negotiate or to finalize any agreement that would bind us without our knowing about in advance.

Q. When would that conversation have taken place? A. Over one or two discussions on the telephone in a period, I would say my guess is about February, February perhaps and into March.

Q. Now, was there anything further brought to your attention either by Mr. Fazzino or Mr. Lasaponara relative to this particular Union or any Union activity in the interim period up until approximately April 7, 1974?

A. Yes, but I am not clear as to whether I am being redundant to what I am talking about the same one or two meetings because most of this was in talking to Joe over the telephone. He assured me — well, there had been activity and that the Union representatives continued to try occasionally to call them to insert themselves and these are my words and not 259 Joe's, that nevertheless things were pretty well under control. However, they were continuing to try to make forward progress. Probably the next time that I can recall that the subject came up was at a meeting we held with the — I came into Utica for the meeting with Lasaponara, Tony Fazzino and Mr. Zappone with the Marine Midland Bank were incidentally critical in this particular document that I had been referring to. We had this meeting with the Bank to break loose this document and get this thing completed because the delay was long about then we suspected was on that day, we had lunch and we discussed this briefly, not only we but also with Mr. Zappone who said generally that this was under control. This was not an extensive discussion but sort of a passing reference.

Q. Now, at the meeting when you came up to Oriskany and addressed the employees on March 27th, did any of the employees approach you about a union or about any union matter? A. In my recollection, I don't

believe the union came up in any frame of reference at all on that day.

Q. Now, in regard to this type of a business, making ricotta cheese, Mr. Fazzino testified about that its a perishable product and that its been the
260 practice in the industry to work on Palm Sunday because this is a high point on the year. Are you familiar with that aspect of the business? A. I am to the extent that we also own two other small companies that are in the same type of business.

Q. Is it the practice there to work on Palm Sunday? A. It is not only Palm Sunday but any holiday preceding a major significant holiday in this business, those holidays are number 1, Easter, number 2, Christmas, number 3, Thanksgiving and the 4th is really New Years Eve, New Years Day.

Q. Now, in regard to the Petition which is the Palm Sunday Petition which is Exhibit 4, General Counsel's Exhibit 4. When did you first see that Petition? A. I can't tell you when I first saw it. As I recall Tony told me about it and put it in an envelope and sent it to me in the mail.

Q. When would that have been roughly? A. Probably a week or fifteen - ten days after it had happened.

Q. In any case, at that time you became the President of Lasaponara, you did know about that? A. Yes, I did.

261 Q. That Petition, right? A. Yes.

Q. When did you know about it, what did you do? A. Well, my first knowledge of this Petition is when Tony called me.

Q. When would that have been? A. This would have been my recollection, is that he either called me on the Thursday or Friday that it happened and in short there was this threat of absenteeism during this period and I said first keep in mind that I am not the owner of this company nor do I have any authority in it and therefore, no responsibility so whatever you do, is really your own decision. However, my suggestion is that because some

people apparently have responded, they will come in, why don't you wait and see how many do come in and make the best of it as you possibly can. At that point, he really had little alternative.

Q. Did you do anything in regard to this matter, in regard to the six people -- there were six people as far as you knew that didn't come into work that day? A. Yes.

Q. Did you do anything in regard to that situation and if so when and what did you do? A. Well, as I mentioned, Tony called me first on a Thursday or Friday and subsequent to that on Monday. I believe it was on Monday. We conversed by telephone and Tony told me that a certain had
262 reported and a certain had not. His inclination was to dismiss them.

I said you had better wait and find out what the proper thing is to do. Again I can't tell you what to do. However, you wait, I suggested you wait until you get expert advice on that matter. Considering the closing was still about to take place we did -- Tony did wait even though he had sent me the papers and I did wait and I did nothing with this paper because I had no authority until the closing took place. Pertinent to this, to the answer, at least that one of the reasons the closing was delayed was a -- is that Lasaponara Company was in considerable financial difficulty and one of my concerns was that we do whatever is proper so as not to further jeopardize the company so as soon as the escrow was completed, we began to work with the Lasaponara to take immediate steps to correct whatever conditions we could in order to prove the operating as a result of the company, this took a few days or a week. Within that period of the next ten days, I also consulted our Counsel and the boss in area with this problem of the people who had not reported to work. I asked them what we should do or what they recommended or give us advice. They suggested since they are not labor relations attorneys and since this had taken place in the State of New York, that we select counsel in the State of New York to advise us and I suggested

263 they recommend someone and it took them a few days and they finally referred us to yourself, Mr. Benzow, who then contacted me to get the facts. We acquainted you with the facts, you told me you would make an investigation which you did and to keep a long story short, you finally gave me your recommendation in writing which we then proceeded to implement. This took up the period between the date they did not report to work and we took our actions, we took your acts less than five days after your receipt of recommendation.

Q. In the interim period, was there a meeting with the National Labor Relations Board investigator sometime around May 14, 1974 at the Oriskany plant? A. Yes, there was a Mr. Friend from the National Labor Relations Board, is this the meeting you are referring to?

Q. Yes. A. Mr. Friend came to the Oriskany plant to investigate, I guess a fact finding investigation pertinent to a claim that had been made by the Union.

Q. So you were involved in that proceeding also during this interim period between the time you took over the business and — A. I came down specifically to meet with Mr. Friend to also learn what the facts were in the matter, that's right.

264 Q. So there came a time which according to the testimony, up to this point, was June 7, 1974 when you gave instructions to Mr. Fazzino, is that correct, relative to these six people? A. Oh, you mean when I had told — yes, I called.

Q. After you made your decision — A. I called, lets see the dates, I believe June 7th is the date they were given their dismissal notice.

Q. Would you like a calendar to look at? A. If that is a Friday, I believe that is correct.

Q. That is a Friday. A. I called Mr. Fazzino on about Tuesday or Wednesday of the week by telephone and I instructed him to allow

these people to work out the week and that on completion of their work on Friday, he was to notify them that they were being discharged for failure to report to work on the Palm Sunday week even though they had been requested to report and given sufficient notice.

MR. BENZOW: I have no further questions.

JUDGE STONE: Cross examination?

CROSS EXAMINATION

Q. (By Mr. Novak) I just have a few, Your Honor. I think, Mr. Oddi, you stated, if I'm wrong correct me, on three separate occasions you had conversations with Mr. Lasaponara regarding, there were some union activity at the plant and that he had it under control, is that correct?

265 A. I said about three occasions, that's right.

Q. Did he elaborate further what kind of control he had? A. No, he did not. Frankly, as a matter of fact, it was passed over rather —

Q. Did he ask you for an elaboration at the time? A. Of what he meant by control?

Q. Yes. A. No, I did not. It was made rather light of and didn't take on the significance.

Q. When were you first aware of what the name of the union was? A. I can't answer with accuracy. I would estimate that that was probably a meeting we had with Mr. Zappone on the date we had met with the Bank that we discussed this.

Q. In May? A. I couldn't tell you exactly.

Q. Okay. A. That particular date is April 16th.

Q. April 16th. Were you ever informed, Mr. Oddi, I think you heard Mr. DeBella testify yesterday about a call he made to your office on April 4th, leaving his name who he represented and his telephone number. Did you ever get that message? A. I got a message, a message was received in my office and my secretary gave me one of these little telephone slips

266 stating that a Mr. DeBella, I believe it had the designation of the union, had called asking me to call back.

Q. Did you call him back? A. I did not.

Q. Did you make any decision to conclude what his call was about; did you have any idea? A. Frankly, I had an idea that it might have to do with union activity in Lasaponara's and I was in no position to discuss these and I chose not to call back.

Q. Did the fact that there was union activity at the plant, did this play any bearing at all on the sale of Lasaponara to ERE; did it have any bearing on the date of the sale, closing of the sale? A. Would you please repeat that question?

Q. The fact there was union activity at the plant, did that have any bearing on the negotiations involving the sale between you and A. Lasaponara? A. The activity or the lack of activity had no bearing whatsoever on either our terms or the negotiations and did not enter into it in any way, nor the timing.

* * * * *

General Counsel's Exhibit No. 1(c)

FORM NLRB-501 (2-6-73)		Filed: Approved: (Do not stamp No. 14, Item 1, 12)	
UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST EMPLOYER			
INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.		DO NOT WRITE IN THIS SPACE	
		Case No. 3-C-5634 Date Filed 5-22-74	
1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT			
a. Name of Employer: A. Lippman & Sons, Inc. a subsidiary of J. J. Industries, Inc.		b. Number of Workers Employed: 10	
c. Address of Establishment (Street and number, city, State, and ZIP code): 3000 Road, Culinary, New York, 10004		d. Employer Representative to Contact: Anthony Pansino	
e. Type of Establishment (factory, mine, warehouse, etc.): Factory		f. Principal Product or Service: Glass products	
2. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.			
Basis of the charge (be specific as to facts, names, addresses, plants involved, dates, places, etc.):			
<p>Since on or about December 14, 1973, and at all times thereafter, it, by its officers, agents, and representatives, has refused to bargain collectively with Mechanics Educational Society of America, AFL-CIO, a labor organization chosen by a majority of its employees in an appropriate unit, for the purpose of collective bargaining in respect to terms of pay, wages, hours of employment, and other terms and condition of employment.</p>			
By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.			
3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number):			
Mechanics Educational Society of America, AFL-CIO			
4a. Address (Street and number, city, State, and ZIP code):		4b. Telephone No.:	
111 East Chestnut Street, Room, New York 10040		212-233-1600	
5. Full Name of National or International Labor Organization of which it is an Affiliate or Subsequent Unit (to be filed in where charge is filed by a labor organization)			
211 E. Chestnut St., Room, N.Y.			
6. DECLARATION			
I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.			
By _____ (Signature of representative or person filing charge)		National Representative Title: _____	
Address: 211 E. Chestnut St., Room, N.Y.		212-233-1600 (Telephone number)	
PRELUCELY FALSE STATEMENT ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)			

General Counsel's Exhibit 1 (C)

General Counsel's Exhibit No. 1(r)

FORM NLRB-101 12-677		Form Approved Budget Bureau No. 64-R001.12	
UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD			
UNFILED CHARGE AGAINST EMPLOYER		SECOND ATTENDED	
INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.		DO NOT WRITE IN THIS SPACE Case No. 3-CR-5708 Date Filed 7-25-74	
I. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT			
a. Name of Employer (Include full name, address, and city, state, and ZIP code) WITNESS, INC., 1000 W. 10th Street, Chicago, Ill. 60607		b. Number of Workers Employed 10	
c. Address of Establishment (Street and number, city, state, and ZIP code) 5100 Road, Chicago, Ill. 60607		d. Employer Representative to Contact Anthony Fazzino	
e. Phone No. 730-0844		f. Identify Principal Product or Service cheese products	
g. Type of Establishment (Factory, mine, wholesaler, etc.) Factory			
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (2) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.			
i. Basis of the charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.) On or about May 27, 1974, the company refused to reinstate Peter Gross to his job. On or about June 7, 1974, the company discharged Don Wilson, William Bonville, Robert Kraeger, Margaret Beck, Richard Hays and Gary Bartle.			
By the acts and conduct described in the paragraph above and by other acts and conduct, it, by its officers, agents and representatives has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.			
j. By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.			
k. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number) Mechanics Educational Society of America, AFL-CIO			
4a. Address (Street and number, city, state, and ZIP code) 111 E. Chestnut St., Rome, N.Y. 13440		4b. Telephone No. 337-1600	
5. Full Name of National or International Labor Organization of Which It is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization) Mechanics Educational Society of America, AFL-CIO			
6. DECLARATION			
I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.			
By <u>Anthony Fazzino</u> (Signature of representative of person filing charge)		National Representative (Title, if any)	
Address <u>111 E. Chestnut St., Rome, N.Y. 13440</u> (Telephone number)		Date <u>July 24, 1974</u> (Date)	
FALSIFYING FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)			

GPO 768-071

General Counsel's Exhibit No. 2

MECHANICS EDUCATIONAL SOCIETY OF AMERICA, AFL CIO

LOCAL NO. _____ SERIAL # _____
Membership Application & Authorization Card

I, the undersigned, do hereby apply for membership in the Mechanics Educational Society of America (MESA), AFL-CIO, and authorize said union to represent me in collective bargaining. This supersedes any previous authorization I may have given to any other labor organization.

DATE Nov 26 19 73NAME EVA Wilson

(PRINT ONLY)

STREET 914 Cayuga ST PHONE 33-6-1743CITY Rome, STATE NY ZIP CODE 13440TRADE wrapper NAME OF PLANT Lasaponera, NY

SHIFT _____ VOUCHER FOR BY _____

AMT. PAID \$ _____ Applicant's Signature Eva Wilson

General Counsel's Exhibit No. 3

RECEIVED
DEC 13 1973

DEC 13 PM 1:10

NEW YORK

Dec. 3, 1973

Certified Mail

A. Lapanara & Sons, Inc.
 1000 Road
 Oriskany, N.Y. 13424

Gentlemen:

This is formal notice that a majority of your employees have designated Mechanics Educational Society of America, Inc. as their sole collective bargaining agency to represent them in matters involving wages, rates of pay, hours of work and any other conditions of employment.

We therefore request a meeting with you for the purpose of negotiating a contract covering the above related matters on the earliest mutually convenient date.

Our committee is prepared to meet on any date subsequent to Dec. 3, 1973 on the company's premises or any other convenient location.

I would appreciate an early reply.

Yours very truly,

James A. Gama,
 National Representative

JAG:d

General Counsel's Exhibit No. 4

ALL THE MEMBERS OF THE NATIONAL LABOR RELATIONS BOARD
 AND THE NATIONAL LABOR RELATIONS BOARD, ATTORNEYS, AND
 LAWYERS, AND ALL THE MEMBERS OF THE NATIONAL LABOR RELATIONS BOARD
 APRIL 7, 1974, AND THE NATIONAL LABOR RELATIONS BOARD, ATTORNEYS, AND
 LAWYERS, AND ALL THE MEMBERS OF THE NATIONAL LABOR RELATIONS BOARD

Since this is a religious holiday that is important to
 us, we request that this schedule be reconsidered.

In the event that this schedule is not changed, you are
 advised that we will not report for work on Palm Sunday, Apr.
 7, 1974, but will report to work on Monday, April 8, 1974.

[Handwritten signature]

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NATIONAL LABOR RELATIONS BOARD

Case No. *2-2-2* OFFICIAL EXHIBIT NO. *4*

Disposition

Received ☒

Received ☒

Received ☒

In the matter of *A. Depina et al.*

Date *4/7/74* Address *Depina et al.*

No. Pages *5*

General Counsel's Exhibit No. 5

[illegible]

General Counsel's Exhibit No. 6

Mr. Anthony Passino
A. Lassanara & Sons, Inc.
Base Road
Oriskany, N.Y. 13424



Dec. 7, 1973

Mr. Anthony Passino, Plant Manager,
A. Lassanara & Sons, Inc.
Base Road
Oriskany, N.Y. 13424

Dear Sir:

This is formal notice that the following employees were designated to serve on the Organizational Committee of the Mechanics Educational Society of America, AFL-CIO:

Robert Kraeger, William Sonville, Pietro Maraca, Eva Wilson, Margaret Peck.

As such, it is their duty to promote the interests of the Union and to protect the welfare of the employees within legally permissible limits.

Their function is protected by Federal Law. In the interest of establishing an harmonious relationship between the Union and the Company, you are cautioned against any type of interference with the exercise of that function.

Yours truly,

James Kozma,
National Representative

Jkd

SENDER: Be sure to follow instructions on other side

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)

☐ Show to whom, date and address ☐ To whom ONLY

RECEIPT

Received the number of article described below

RECEIVED NO. 2089-3

DATE RECEIVED DEC 8 1973

BY William Sonville

FOR MECHANICS EDUCATIONAL SOCIETY OF AMERICA

General Counsel's Exhibit No. 7

RECOGNITION AGREEMENT

by and between

LASAPONARA & SONS, INC.

and

MECHANICS EDUCATIONAL SOCIETY OF AMERICA
AFL-CIO

Effective April 1, 1973, Lasaponara & Sons, Inc.
will recognize the Mechanics Educational Society of
America, AFL-CIO as the sole collective bargaining agency
on behalf of the employees employed at its plant located
on Base Road, Oriskany, N.Y. for rates of pay, wages,
hours of work and any other conditions of employment.

By _____

By _____

WITNESSES

Dated _____ day of _____, 1973

NATIONAL LABOR RELATIONS BOARD
304 3637
Docket 304 3637 OFFICIAL EXHIBIT NO. 1007
In the presence of _____
Date 9/11/74 Witness Key Reporter A.E.
No. Pages 1

General Counsel's Exhibit No. 8

NLRB 601
571UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

WITHDRAWAL REQUEST

In the matter of _____
(Name of case) (Number of case)

This is to request withdrawal of the (petition) (charge) in the above case.

(Name of Party Filing)

Withdrawal request approved

By _____
(Name of Representative)_____
(Date)_____
(Title)Regional Director,
National Labor Relations Board.

Date _____

NATIONAL LABOR RELATIONS BOARD
Docket No. 2A 3708 OFFICIAL EXHIBIT NO. 603

I hereby certify _____

(Signature)_____
(Title)In the matter of A. J. Thompson
Date 9/11/74itness Raymond H. H.
No. 603
1

General Counsel's Exhibit No. 10

NATIONAL HEADQUARTERS
400 EAST CHESTNUT STREET
DETROIT, MICHIGAN 48226

Phone: (313) FF 7-1600

GEORGE WHITE, National President
Union, Mich., Phone: (313) 75-9127
ALFRED SMITH, National Secretary-Treasurer
Detroit, Mich., Phone: (313) 281-9171

Mechanics Educational Society of America

AFFILIATED WITH A.F.L.-C.I.O.
ROME REGIONAL OFFICE
410 EAST CHESTNUT STREET
ROME, NEW YORK 13440

15

Mar. 8, 1974

Mr. Joseph Lasaponara, Pres.
Lase Road
Oriskany, N.Y.

Dear Mr. Lasaponara:

Pursuant to our recent telephone conversation I am submitting the information we discussed.

The following employees have six(6) months or more of service with the company and have not, as yet, received their fifteen(15) cents per pay raise:

Marge Peck
Eva Wilson
Pat Wilson

The company policy as understood in our original discussion was to grant pay raises after six(6) months and periodically thereafter.

Employee Lyndsay Wyncoff is receiving \$2.70 per. He feels he should be receiving \$2.95 per hour. He has seven(7) months service and is getting 25 cents an hour less than other employees with less service who are doing the same work.

Employee William Boneville, Fork Lift Operator, has about 10 months and getting \$2.95 an hour. This is 25 cents an hour less than his predecessor who was getting \$3.20 an hour.

In addition there are a number of employees to whom the group health/insurance has not been made available. They are eligible in accordance with company policy because they have six(6) months or more service.

An early reply will be appreciated.

Very Truly Yours

[Signature]
ALFRED SMITH

Respondent's Exhibit No. 1

Mechanics Educational Society
of America, AFL-CIO
310 East Chestnut Street
Rome, New York 13440

January 14, 1974

New York State Labor Relations Board
2 World Trade Center, 33rd Floor
New York City, New York 10047

Re: Case No: CE-1678==Lasaponara
and Sons, Inc. ==and= Mechanics
Educational Society of America,
AFL-CIO

Gentlemen :

On behalf of the Petitioner herein, which Petition was filed with the
State Labor Relations Board on December 4, 1973, I respectfully request
permission to withdraw such Petition which has been docketed under the
above caption, for the reason that a similar Petition was also filed
with the National Labor Relations Board and said National Board has now
exercised its jurisdiction over this Employer.

Thank you for your cooperation.

Very truly yours,

James Kozma
MECHANICS EDUCATIONAL SOCIETY
OF AMERICA, AFL-CIO

BY: *[Signature]*

Respondent's Exhibit No. 2

January 8, 1974

Richard E. Hirsch
Director of Labor, IRL-CIO
120 E. 42nd Street
New York, New York

Re: International and Sons, Inc.
Case No. 65-1673

Dear Sir:

We have received your request for leave to withdraw
the petition filed in the above case.

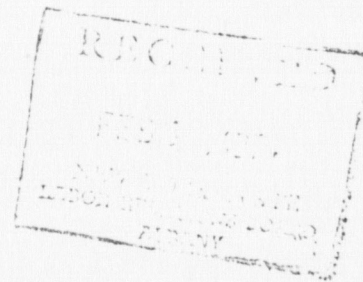
As of this date, the file will be closed, without
prejudice.

Very truly yours,

Ernest R. Rausig
Executive Secretary
Tel. No. 400-4540

cc: International and Sons, Inc.

/N.Y.C. Labor Relations Board
New York, New York



Respondent's Exhibit No. 3

UNITED STATES DEPARTMENT OF LABOR

BUREAU OF EMPLOYMENT SECURITY - NEW YORK REGION

345 United Way, West
Syracuse, New York 13202

DECISION AND NOTICE OF DECISION

JUDITH WEISS
SAMUEL S. FARMOND
JOSEPH J. KATZ, JR.
BENJAMIN R. FRIEDMANUPDATE OFFICES
HYMAN NELSON
BENJAMIN R. FRIEDMAN

In the Matter of:

Peter J. Muraco
445 Miller Street
Syracuse, N.Y. 13202

Reference: 76-72219

S.S.A. # 111-42-5101

DECISION MAILED AND DULY FILED IN THE
DEPARTMENT OF LABOR ON MAY 10 1974Local Office # 20
Department of Labor
540 Charlotte Street
Utica, N.Y. 13501James DeRella, National Rep.
UTU AFL-CIO
111 E. Chestnut Street
Rome, N.Y.A. Iaconopolo & Sons
R.D. #1 - Millersburg Road
Cochran, N.Y.Joseph Kozma, Nation Rep.
UTU AFL-CIO
111 E. Chestnut Street
Rome, N.Y.

FINDINGS OF FACT: A hearing was held at which claimant, his witnesses and representatives appeared and testified. A statement was submitted on behalf of the Industrial Commissioner in lieu of an appearance.

In initial determination effective January 2, 1974, claimant was disqualified because of voluntary leaving of employment without good cause by provoking his discharge. By an initial determination claimant was ruled to forfeit eight effective days because of wilful false statements to obtain benefits and was held overpaid \$210, which was deemed recoverable.

Claimant, a fork lift operator, was employed for 13 months ending December 21, 1973. He did not report to work on his next scheduled reporting day, December 24, 1973, and did not notify the employer. There was heavy snowfall on December 24. He next reported to work on December 26, 1973, and was told that he had been suspended for two weeks because of his absence without notification on December 24.

Claimant was scheduled, under the terms of the suspension, to return to work on January 14, 1974. Prior to that date he communicated with the employer to ask that the two week suspension period be designated as his vacation period and that the vacation further be extended so that his return to work date would be January 21, 1974, rather than January 14. The claimant's superintendent told claimant that he could come back whenever he wanted. Claimant interpreted this to mean that his request for extending the period of absence had been granted. He returned to work on January 14, 1974, and was told that he had been discharged.

When claimant filed for benefits, he stated that he was unemployed because of not enough work. He was aware that he had been discharged. He received \$210 in Unemployment Insurance benefits under this claim.

OPINION: Based upon the evidence before this Referee, I am constrained to find that claimant believed that he had been granted permission to return to work on January 21 rather than on January 14, 1974, and therefore did not provoke his discharge. He is not subject to disqualifications and is entitled to the benefit payments he received.

Claimant knew that he had been discharged for having failed to report to work on January 14, 1974, and that he was not unemployed as a result of not enough work. His statement to the Insurance Office was a false statement wilfully made, but as he was not overpaid as a result of this statement, the penalty would be four effective days.

DECISION: The initial determination of voluntary leaving of employment without good cause is overruled. The initial determination of wilful false statement to obtain benefits is modified as reduced to forfeiture from eight to four effective days, and as modified, is sustained. Claimant was not overpaid benefits.

JP

P. E. MILLER

SEE NOTICE OF DECISION AND IMPORTANT INSTRUCTIONS ON REVERSE SIDE Referee

Respondent's Exhibit No. 5

NATIONAL LABOR RELATIONS BOARD

REGION 3

111 West Hudson Street

Buffalo, New York 14202

December 26, 1970

Telephone (716) 642-3100

Mr. [Name] & Sons, Inc.
 100 [Address] Building, Plant Hqr.
 [Address]
 Buffalo, New York 14204

Mr. [Name] & Sons, Inc.
 100 [Address] Building, Plant Hqr.
 [Address]
 Buffalo, New York 14204

Re: A. [Name] & Sons, Inc.
 Case No. N-73-5913

Gentlemen:

This is to advise that the petition in the above case has,
 with my approval, been withdrawn.

Very truly yours,

THOMAS W. COLLIER
 Regional Director

cc:

Edward [Name], Esq.
 Commercial Bank Building
 Rochester, New York 14610

Mechanics Educational Society
 of America, AFL-CIO
 Attn: James [Name], National Rep.
 610 E. Chestnut Street
 Chicago, New York 10440

Norman Goldfarb
 By _____
 Norman Goldfarb, Atty. to the
 Regional Director

